

UNITED STATES  
CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT.

9

CENTRAL CALIFORNIA CANNERIES COMPANY,  
vs.  
DUNKLEY COMPANY (Now Known as MICHIGAN CANNING &  
MACHINERY COMPANY) and DUNKLEY COMPANY,  
Appellant,  
Appellees.

GRIFFIN & SKELLEY COMPANY,  
vs.  
DUNKLEY COMPANY (Now Known as MICHIGAN CANNING &  
MACHINERY COMPANY) and DUNKLEY COMPANY,  
Appellant,  
Appellees.

J. C. AINSLEY PACKING COMPANY,  
vs.  
DUNKLEY COMPANY (Now Known as MICHIGAN CANNING &  
MACHINERY COMPANY) and DUNKLEY COMPANY,  
Appellant,  
Appellees.

ANDERSON-BARNGROVER MANUFACTURING COMPANY,  
vs.  
DUNKLEY COMPANY (Now Known as MICHIGAN CANNING &  
MACHINERY COMPANY) and DUNKLEY COMPANY,  
Appellant,  
Appellees.

GOLDEN GATE PACKING COMPANY,  
vs.  
DUNKLEY COMPANY (Now Known as MICHIGAN CANNING &  
MACHINERY COMPANY) and DUNKLEY COMPANY,  
Appellant,  
Appellees.

J. F. PYLE & SON, INC.,  
vs.  
DUNKLEY COMPANY (Now Known as MICHIGAN CANNING &  
MACHINERY COMPANY) and DUNKLEY COMPANY,  
Appellant,  
Appellees.

HUNT BROTHERS COMPANY,  
vs.  
DUNKLEY COMPANY (Now Known as MICHIGAN CANNING &  
MACHINERY COMPANY) and DUNKLEY COMPANY,  
Appellant,  
Appellees.

SUNLIT FRUIT COMPANY,  
vs.  
DUNKLEY COMPANY (Now Known as MICHIGAN CANNING &  
MACHINERY COMPANY) and DUNKLEY COMPANY,  
Appellant,  
Appellees.

TRANSCRIPT OF THE RECORD.

Upon Appeals from the Southern Division of the United States  
District Court for the Northern District of  
California, Second Division.

FILED

FEB 2 - 1922



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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### **Names and Addresses of Attorneys of Record.**

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known),

Attorneys for Defendants.

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At a stated term, to wit, the March term, A. D. 1916,  
of the District Court of the United States of  
America, in and for the Northern District of  
California, Second Division, held at the court-  
room in the City and County of San Francisco,  
on Wednesday, the 5th day of April, in the year  
of our Lord one thousand nine hundred and six-  
teen—Present: The Honorable WILLIAM C.  
VAN FLEET, District Judge.

No. 201—Dunkley Company vs. Central California  
Canneries Co.

No. 202—Dunkley Company vs. Griffin & Skelley  
Co.

No. 205—Dunkley Company vs. J. C. Ainsley Pack-  
ing Co.

No. 206—Dunkley Company vs. Anderson-Barngrover  
Mnfg. Co.

No. 209—Dunkley Company vs. Golden Gate Packing Co.

No. 210—Dunkley Company vs. J. F. Pyle & Son, Inc.

No. 211—Dunkley Company vs. Hunt Bros. Co.

No. 212—Dunkley Company vs. Sunlit Fruit Co.

**Minutes of Court—April 5, 1916—Order Submitting Causes.**

Counsel being present as heretofore the trial was resumed. Stewart L. Campbell was recalled and William Brunker was sworn and testified on behalf of defendants. T. B. Dawson was sworn and testified on behalf of plaintiff and E. B. Mapes was sworn and testified on behalf of defendants. Plaintiff introduced and filed its exhibits marked "12" and defendants introduced and filed their exhibit marked "BB". Both sides rested and the evidence being closed counsel for the respective parties made their arguments to the Court and the suits were submitted; plaintiff to have ten days to file its brief and defendants ten days thereafter to reply. [1\*]

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(Title of Court and Causes.)

**Motion Made Pursuant to Permission Given in the Mandate of the U. S. Circuit Court of Appeals.**

Plaintiff shows that the mandate of the Circuit Court of Appeals herein was "directed to issue without prejudice to the right of the plaintiffs appellees herein to apply to the District Court for leave to make the

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\*Page-number appearing at foot of page of original certified Transcript of Record.



Dunkley Company or such other corporation or persons as plaintiffs appellees may contend is or are proper or necessary party plaintiffs to the action."

Plaintiff shows that the statement of the Court of Appeals was brought forth because of a motion filed by the defendants-appellants in the United States Circuit Court of Appeals for "orders vacating decree affirming decrees of District Court, etc.", based on a certain affidavit and showing, copy of which will be produced in court.

Plaintiff shows that, according to the documents thus adduced and offered by defendant, the name of the Dunkley Company, plaintiff herein, has been changed to Michigan Canning & Machinery Company, as appears at printed pages 54-55 of said motion of defendants-appellants, the change of name having been consummated January 27, 1916. That a new Dunkley Company was incorporated and such incorporation completely consummated on January 27, 1916, under the name of Dunkley Company, as appears at printed pages 55-61 of the printed motion of defendants. That after such incorporation, namely, on the 25th day of July, 1916, the Michigan Canning & Machinery Company assigned to the new Dunkley Company the United States Letters Patent No. 1,104,175 dated July 21, 1914, which assignment did not include the right of action in the [2] present suits and did not include the right to recover for past royalties or damages.

Plaintiff further shows that the incorporation of the new Dunkley Company and the assignment of the patent was done to put in legal form and accomplish

the reorganization of the plaintiff company with increased capital stock, as fully appears in the depositions of Henry W. Hardy, William F. Burrows and Henry Veeder, filed before the master herein, to which a reference is hereby made for greater certainty; and that there has been really no change of parties in interest and persons in control of the said patent herein suit.

Plaintiff further shows that to complete the reorganization and place the full title in the new Dunkley Company, on the 9th day of July, 1918, it supplemented the assignment referred to above by an assignment of the right to recover for past profits and damages, and the right to conduct these suits in the name of the plaintiff to recover all profits and damages herein, copy of which assignment is hereto attached.

Wherefore, plaintiff prays that the said new Dunkley Company may be made party plaintiff herein, as it is the chief party in interest and is this plaintiff after reincorporation with increased capital stock.

FRED L. CHAPPELL and  
W. A. RICHARDSON,

Counsel for Plaintiff.

The new Dunkley Company above referred to hereby prays that it may be made a party plaintiff herein, and that it may be substituted in the place of the Dunkley Company herein, having acquired the rights thereof by proper legal assignments and being the said company after the reincorporation proceedings referred to above.

FRED L. CHAPPELL and  
W. A. RICHARDSON,

Counsel for the new Dunkley Company. [3]

ASSIGNMENT.

WHEREAS, Michigan Canning & Machinery Company (formerly named Dunkley Company) of Kalamazoo, Michigan, a corporation, duly incorporated and existing under the laws of the State of Michigan, did obtain letters patent of the United States for an improvement in machines for Peeling Peaches and Other Fruit, which letters patent are No. 1104175 and bear date the 21st day of July, 1914;

AND WHEREAS, the said Michigan Canning & Machinery Company did heretofore, to wit, on the 25th day of July, 1916, assign and transfer unto the Dunkley Company, a corporation, duly incorporated and existing under the laws of the State of Michigan, its right, title and interest in and to the said improvement in machines for Peeling Peaches and Other Fruit, and in and to the letters patent therefor aforesaid;

AND WHEREAS, said Michigan Canning & Machinery Company is desirous of making a further and more complete assignment to the said Dunkley Company of all of its rights in and to the said improvement and the letters patent therefor, including any and all rights it may have to recover past profits and damages for all past infringements of said letters patent, and the right to maintain a suit in its name for or on account of any act, matter or thing growing out of the said letters patent, or any alleged infringement thereof, in any court or courts whatsoever;

AND WHEREAS, the Dunkley Company, a corporation, duly incorporated and existing under the laws of the State of Michigan, is desirous of acquiring the entire interest in the same;

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN, BE IT KNOWN, that for and in consideration of the sum of Ten (\$10.00) Dollars, and other good and valuable consideration, to it in hand paid, the receipt of which is hereby acknowledged, the said Michigan Canning & Machinery Company has sold, assigned and transferred unto [4] the said Dunkley Company the whole right, title and interest in and to the said improvement in machines for Peeling Peaches and Other Fruit, and in and to the letters patent therefor aforesaid; together with the right to sue for, take, receive and recover any and all past profits and damages for all past infringements of said patent, and especially for all such infringements mentioned or referred to or alleged to exist or found to have existed or to exist in that certain suit tried in the District Court of the United States, for the Second Division of the Southern Division of the Northern District of California, entitled "Dunkley Company vs. Central California Canneries Company", and of all the suits filed in the said District Court of the United States, for the Second Division of the Southern Division of the Northern District of California, which were subsequently consolidated with the above mentioned suit and tried together therewith, particularly the suits of said Dunkley Company against the Griffin & Skelley Company, J. C. Ainsley Packing Company, and the Anderson Barngrover Manufacturing Company, J. F. Pyle & Son, Incorporated, the Hunt Brothers Company, and the Sunlit Fruit Company, a corporation, all of which suits

were consolidated and tried together by the said District Court of the United States, for the Second Division of the Southern Division of the Northern District of California, resulting in a judgment in favor of plaintiff in each and all of said suits, which judgment was subsequently affirmed by the Circuit Court of Appeals for the Ninth Circuit, being Case No. 2915 in the record of said Circuit Court of Appeals, and entitled therein "Central California Canneries Company, et al., vs. Dunkley Company"; together also with the right to sue for, receive, collect, have and recover all past profits and damages for all past infringements of the said letters patent, and more particularly also for all such alleged infringements alleged to exist in that certain suit now pending in the District Court [5] of the United States, for the Southern District of California, Southern Division, being No. C-8 in Equity in the Records of the Clerk's Office of said Court, and entitled Dunkley Company and Michigan Canning & Machinery Company, Plaintiffs, vs. Pasadena Canning Company and George E. Grier, Defendants"; together also with the right to sue for, collect, have, receive and recover all such past profits and damages for any and all such past infringements on the part of any person or persons or corporations, firms, associations or co-partnerships, wheresoever the same may be and in whatsoever court actions for such infringements are or may be pending; together also with the right to maintain each and all and every one of the suits herein mentioned and any and all suits in whatsoever jurisdictions the same may be now pending, and to make and take any and all



action of any nature whatsoever that it may deem proper in each or all or any of said suits, and to prosecute the same, or any of them, to final judgment on appeal, or otherwise, in the name of this assignor, but nevertheless for the use and benefit of said Dunkley Company; the same to be held and enjoyed by the said Dunkley Company for its own use and benefit and for the use and benefit of its legal successors and assigns to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by it had this assignment and sale not been made.

IN WITNESS WHEREOF, the said Michigan Canning & Machinery Company has caused this instrument to be executed in its corporate name and in its behalf by its president, and its corporate seal affixed, and the same to be attested by the signature of its secretary, this 9th day of July, 1918.

MICHIGAN CANNING & MACHINERY  
COMPANY,

By PHILIP LARMON,  
President.

Attest: S. J. DUNKLEY,  
Secretary. [6]

State of California,  
County of San Francisco,—ss.

On this 9th day of July, 1918, before me, Nettie Hamilton, a Notary Public in and for said County, personally appeared Philip Larmon, known to me to be the president and S. J. Dunkley, known to me to be the secretary of the Michigan Canning & Machinery Company, the corporation that executed the within

and foregoing instrument, and known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

WITNESS my hand and official seal, the day and year in this certificate first above written.

NETTIE HAMILTON,

Notary Public in and for the City and County of  
San Francisco, State of California.

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(Title of Court and Causes.)

To William K. White, Solicitor for Defendants,  
Crocker Bldg., San Francisco, Calif.

Please take notice that on Monday, August 19, 1918, at 10 o'clock in the forenoon or as soon thereafter as counsel can be heard, we shall present to the Court the motion, copy of which is hereto attached.

FRED L. CHAPPELL and

W. A. RICHARDSON,

Counsel for Plaintiff.

[Endorsed]: Filed Aug. 13, 1918. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [7]

(Title of Court and Causes.)

**Notice of Motion.**

APPLICATION FOR A REQUEST TO THE  
CIRCUIT COURT OF APPEALS TO RE-  
CALL ITS MANDATE AND FOR A RE-  
HEARING.

To Dunkley Company, Plaintiff, and to Fred L.  
Chappell and W. A. Richardson, Its Solicitors  
and Counsel, No. 602 Foxcroft Building, San  
Francisco, California:

PLEASE TAKE NOTICE that on Monday, No-  
vember 11, 1918, at 10 o'clock A. M., or as soon  
thereafter as counsel can be heard, in the courtroom  
of the above-entitled Court in the United States Post  
Office and Court House Building in the City and  
County of San Francisco, State of California, the  
above-named defendants will present to the Court the  
motion, copy of which is hereto attached.

KEMPER B. CAMPBELL,  
F. S. LYON,  
WM. K. WHITE,

Solicitors and Counsel for Defendants. [8]

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(Title of Court and Causes.)

**Motion—Application for a Request to the Circuit  
Court of Appeals to Recall Its Mandate  
and for a Rehearing.**

Come now the defendants in the above-entitled



causes and move the Court for the following order and decree, and such other relief as to this Honorable Court may appear proper and just in the premises, to wit:

An order and decree requesting the United States Circuit Court of Appeals for the Ninth Circuit to make an order permitting this Honorable Court to open, vacate and set aside the writ of injunction and every order, judgment and decree made in each of the above-entitled causes, and all proceedings therein, pursuant to and in compliance with the mandate of said Circuit Court of Appeals issued in each of said causes on the 20th day of May, 1918, and filed and spread upon the minutes of this Court on the 22nd day of May, 1918; and further requesting said Court of Appeals to recall, vacate and set aside said mandate, and to return the record in each of the above entitled causes to this Honorable Court for the purpose of enabling this Court to vacate and set aside the writ of injunction and every order, judgment and decree of this Honorable Court made and entered by it in each of the above entitled causes, and all proceedings therein pursuant to and in compliance with said mandate; and to reopen the trial and hearing of each of said causes, and to permit the defendants herein to amend their respective answers so as to plead the newly discovered defenses shown by the affidavits and documents on which this motion is based, and to receive in the [9] trial and hearing of each of said causes so reopened newly discovered, additional and further evidence bearing on the validity of the claims of the United States Letters Patent No. 1,104,175;

and on the question of alleged infringement of said letters patent by the above-named defendants; and to make a new and different order, judgment and decree in each of said causes, if such new evidence so received warrants such action.

### GROUND OF MOTION.

Said motion will be based upon the following grounds, to wit:

(1) That subsequent to the issuance of said mandate a trial and hearing of another suit entitled Dunkley Company (a corporation) and Michigan Canning & Machinery Company (a corporation) Plaintiffs, vs. Pasadena Canning Company and George E. Grier, Defendants, was had in the United States District Court, Southern District of California, Southern Division. That said trial commenced on the 21st day of May, 1918, and said cause was submitted for decision on the 6th day of July, 1918, and a decree was entered therein on the 4th day of September, 1918. That said suit was an action brought by plaintiffs for the infringement of United States Letters Patent No. 1,104,175, being the Letters Patent sued on herein.

That the plaintiff herein was also plaintiff in said other suit, and after a change of its corporate name was designated therein as said Michigan Canning & Machinery Company (a corporation).

That in said suit of Dunkley Company (a corporation) and Michigan Canning & Machinery Company (a corporation), Plaintiffs, vs. Pasadena Canning Company and George E. Grier, Defendants, newly discovered, further and additional evidence was

introduced and admitted which was not introduced in the trial and hearing of the above entitled causes before this Honorable Court. [10]

That in said suit of Dunkley Company et al. vs. Pasadena Canning Company et al., said United States District Court in and for the Southern District of California, Southern Division, Judge Oscar A. Trippett presiding, did, on the 19th day of August, 1918, render its decision in which said Court determined and declared that the United States Letters Patent No. 1,104,175, being the Letters Patent sued on herein, were null and void, and the decree of said Court in said suit of Dunkley Company et al. vs. Pasadena Canning Company et al., dismissing the bill of complaints therein, was duly made and entered on the 4th day of September, 1918.

(2) That since the hearing of the above entitled causes by this Honorable Court new, further and additional evidence relevant and material to the issues in each of said above-entitled causes, and which evidence is not merely cumulative, has been discovered; that defendants in preparation for the trial of the above entitled causes used and employed due and reasonable diligence to discover and produce all evidence relevant and material to the issues therein, and that notwithstanding the use and employment of said due and reasonable diligence by defendants herein said new, further and additional evidence was not and could not, with due and reasonable diligence, have been discovered by defendants prior to the trial of said case of Dunkley Company et al. vs. Pasadena Canning Company et al.

(3) That said United States Letters Patent No. 1,104,175, being the Letters Patent sued on herein, and which have been held to be valid by this Honorable Court, have been held invalid by another United States District Court in this Circuit, resulting in a conflict of judicial decisions which will cause commercial confusion and impose upon defendants herein inequitable burdens rendering difficult, if not impossible, business competition with [11] others in the same field.

(4) That the presentation of said new, further and additional evidence will produce a record so materially different from that upon which this Honorable Court rendered its decision and decree herein on the 8th day of December, 1916, that the same would result in a different decision by this Court, and that said United States Letters Patent 1,104,175 would be held by this Honorable Court to be null and void.

(5) That at the time of the trial of the above-entitled causes the plaintiff had no beneficial or equitable interest in the subject matter of said causes, and at the time of the rendition by this Honorable Court of its decision in said causes and the entry of the interlocutory decree therein plaintiff had no interest, beneficial, legal or equitable in the subject matter of said causes.

That long prior to the trial of these causes, to wit; during the month of February, 1916, the plaintiff assigned all its beneficial interest in Letters Patent number 1,104,175 to another corporation retaining only the bare legal title to said patent and assigned all rights and demands for damages and profits by

reason of past infringements of said letters patent on or about said date to said other corporation. That long prior to the decision by this Honorable Court in these causes, to wit: July 25th, 1916, plaintiff assigned by duly executed written assignment the legal title to said letters patent to said other corporation.

That by reason of said assignments each of said causes abated prior to the trial and decision therein and proceedings subsequent to said assignments are nugatory. [12]

At the hearing of said motion defendants will rely on and use all the records, pleadings, briefs and papers in the above-entitled causes and in said causes on appeal before the United States Circuit Court of Appeals for the Ninth Circuit; duly authenticated copies of the opinion and decree of the Court, the records, pleadings, briefs and other papers filed in said suit of Dunkley Company (a corporation) and Michigan Canning & Machinery Company (a corporation), Plaintiffs, vs. Pasadena Canning Company and George E. Grier, Defendants, Equity No. C-8, hereinbefore referred to, together with duly authenticated photographs of exhibits in said suit, and also the affidavits of W. R. Roach, of Hart, Michigan, William K. White, of San Francisco, California, Kemper B. Campbell, of Los Angeles, California, W. R. McDermott, of Pecos, Texas, Mrs. T. H. Brigrance, of Ft. Worth, Texas, B. L. Russell, of Baird, Texas, George J. Stark, of Oakland, California, Charles M. Brodie, of San Jose, California, and Harrie E. Stewart, of Los Angeles, California, and other affidavits and documents to be produced prior to the hearing

upon said motion in accordance with the stipulation filed herewith; by which said defendants will show to the Court that they have discovered new evidence material to the issues herein, and that said evidence could not with due and reasonable diligence have been discovered prior to the trial of the above entitled action nor prior to the trial of said case of Dunkley Company et al. vs. Pasadena Canning Company et al.

KEMPER B. CAMPBELL,

F. S. LYON,

WM. K. WHITE,

Solicitors and Counsel for Defendants.

[13]

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(Title of Court and Causes.)

**Stipulation Waiving Service of Copies of Papers  
to Be Used on Motion.**

IT IS HEREBY STIPULATED by and between the parties to the above-entitled causes, through their respective solicitors and counsel:

(1) That service upon plaintiff as required under Rule 41 of this Court of copies of papers, documents and affidavits to be used by defendants upon the hearing of the foregoing motion is hereby waived, it being further stipulated that service of said papers, documents and affidavits will be made five (5) days prior to the actual hearing of said motion.

(2) It is further stipulated that a copy of this stipulation need not be filed in each of the above-entitled actions but that a copy filed in the first named



thereof shall be considered as filed in each of said causes.

Dated this 4th day of October, 1918.

FRED L. CHAPPELL,  
W. A. RICHARDSON,  
Solicitors and Counsel for Plaintiff.  
KEMPER B. CAMPBELL,  
F. S. LYON,  
WM. K. WHITE,  
Solicitors and Counsel for Defendants.

It is so ordered.

Dated October 14th, 1918.

WM. C. VAN FLEET,  
Judge.

[Endorsed]: Filed Oct. 14, 1918. Walter B.  
Maling, Clerk. [14]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY,      Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,                      Defendant.



IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY, Corporation,  
Defendant.

## Affidavit of August M. Augensen.

[ 15 ]

State of Illinois,  
County of Cook—SS.

AUGUST M. AUGENSEN, being first duly sworn, deposes and says: That he is employed as traveling engineer for the American Can Company, and has been in said company's employ since the year 1901, and that for nine years prior to that time affiant was employed by Edwin Norton and by Norton Brothers, who were the organizers of the said American Can Company.

That affiant visited the South Haven factory of Dunkley Company early in the year of 1902, and in August, 1902, in installing a line of machinery in said factory; that from the middle of March until October, 1904, affiant, under an arrangement between the American Can Company and Mr. Edwin Norton, worked for said Edwin Norton at Dunkley Company's factory at South Haven installing machinery.

That upon the arrival of affiant at said factory in March, 1904, affiant saw Stewart Campbell working on a new lye peach peeling tank near the east end of the main room of the factory on the south side; that later on a brush machine was installed with said lye tank and peach pitting machines were also put in; that said lye tank was about 12 or 14 feet long and 40 inches wide, and from 6 to 18 inches deep, having a circular transverse pocket across the bottom near one end and at its deepest part; that the brush machine was a three line machine having six cylindrical revolving brushes and three brush conveyor belts. There were also perforated pipes above the conveyors and below the brushes for the delivery of water to assist in the cleansing of the fruit; that said machine was installed by Stewart Campbell, whom affiant saw at various times working upon said machine; that during the peach peeling season of 1904 William Tiece was in [16] charge of the operation of the said machine; that no other machine than the one just referred to was operated at the Dunkley factory in the peach season of 1904.

That in the summer of 1904 and a short time prior to the opening of the peach season, affiant saw Melville Dunkley experimenting with a few peaches in a heated solution of lye; that said Melville Dunkley told affiant at that time that he was experimenting with the lye process that Dunkley Company intended to use.

That affiant during the peach season of 1904 had lunch almost daily with Melville Dunkley, Arthur

Norton (son of Edwin Norton), Martin DeLoof (Dunkley's bookkeeper) and others, and that at such times the lye peeling machines and the lye process which was to be used was referred to by Norton and Dunkley as "the new system", and said Norton and Dunkley frequently stated that they hoped that the same would prove to be a good system and would be successful.

That affiant has seen photographs as represented on pages 1123, 1124 and 1125 of Plaintiff's Exhibit "A" in said case of Dunkley Company et al. vs. Pasadena Canning Company et al., entitled "Dunkley's Exhibit No. 2, Photograph 1 of Second Machine", "Dunkley's Exhibit No. 2, Photograph 2 of Second Machine", and Dunkley's Exhibit No. 2, Photograph 3 of Second Machine", respectively, copies of which said photographs are hereto annexed and marked respectively Exhibits "A", "B", and "C" hereof.

And affiant has also seen pages 476, 477 and 478 of a copy of Patent Appeal Docket 790 (Interference No. 30610), said pages containing photographs entitled respectively "Dunkley's Exhibit No. 2, Photograph 1 of Second Machine", "Dunkley's Exhibit No. 2, Photograph 2 of Second Machine" and "Dunkley's Exhibit No. 2, Photograph 3 of Second Machine"; that said photographs represent the brush part of said machine only and do not include the lye tank. [17]

That affiant gave testimony in the case of Dunkley Company et al. vs. Pasadena Canning Company et al. Equity C-8, in the United States District Court, Southern District of California, Southern Division, and affiant refers to the official transcript of said tes-

timony and hereby makes the same a part hereof as if fully set forth herein; that affiant is willing to testify in accordance with this affidavit, in any or all of the above-entitled causes and in any other suit or proceeding in which the same or similar issues are involved.

(Signed) A. M. AUGENSEN.

Subscribed and sworn to before me this 30th day of November, A. D. 1918.

(Signed) P. H. KNOP,

[Notarial Seal]

Notary Public in and for the County of Cook, State of Illinois.

(Three photographic exhibits attached same as exhibits on George K. Brown's affidavit.)

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [18]

In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff.

vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY, Plaintiff.

vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY, Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY, Plaintiff.

vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY, Plaintiff.

vs.

J. F. PYLE & SON, INC., Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY, Plaintiff.

vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY, Plaintiff.

vs.

SUNLIT FRUIT COMPANY, a Corporation,  
Defendant.

**Supplemental Affidavit of August M. Augensen.**

County of Cook,

State of Illinois,—SS.

AUGUST M. AUGENSON, being first duly sworn, deposes and says: That he is the same August M. Augensen who heretofore, to wit, on the 30th day of November, 1918, made affidavit in the above entitled causes before P. H. Knop, notary public in



and for [19] the County of Cook, State of Illinois, and affiant makes this affidavit as supplementary thereto and explanatory thereof.

That the photographs referred to on page 3 of affiant's affidavit of November 30th, 1918, are photographs of the brush part of the lye peeling machine which was installed in the Dunkley South Haven factory in the spring of 1904; that said machine at the time of its installation was new and had never been used previously for the peeling of peaches.

(Signed) AUGUST AUGENSEN,

Subscribed and sworn to before me this 18th day of February, 1919.

[Notarial Seal]

(Signed) LESLIE E. BINCH,

Notary Public in and for the County of Cook, State of Illinois.

[Endorsed]: Filed February 24, 1919. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.  
[20]

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In the Southern Division of the United States District Court for the Northern District of California, Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY,      Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,                  Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY,      Defendant.

**Affidavit of Thomas Brazill.**

State of Michigan,  
County of Kalamazoo,—ss.

Thomas Brazill, being first duly sworn, deposes [21] and says that he is now and for many years last past has been a resident of the City of Kalamazoo, Michigan; that during the year 1904 he was employed as bookkeeper for the Kalamazoo Foundry and Machine Company, of Kalamazoo, Michigan, and as such had charge of the books of entry which were regularly kept by said Kalamazoo Foundry and Machine Company; that on March 31 and April 30, 1904, Stewart Campbell ordered of Kalamazoo Foundry and Machine Company, certain work and materials for Dunkley Company, which were subsequently paid for by said Dunkley Company, and that said work was done and said material furnished as indicated in defendant's Exhibit 37, on file in the case of Dunkley Company vs. Pasadena Canning Company, Equity C-8, in the United States District Court, Southern Dis-

trict of California, Southern Division, which said Exhibit 37 is hereby referred to and made a part hereof.

That said Stewart Campbell informed affiant that said work and materials were for a peach-peeling machine which he was then constructing for Dunkley Company, and that said device was a new invention; affiant further states that the material thus furnished was delivered to the shop of William Decker at Kalamazoo, Michigan.

That affiant gave testimony in the case of Dunkley Company et al. vs. Pasadena Canning Company et al., Equity C-8, in the United States District Court, Southern District of California, Southern Division, and affiant refers to the official transcript of said testimony and hereby makes [22] the same a part hereof as if fully set forth herein; that affiant is willing to testify in accordance with this affidavit and the testimony given in said case, in any or all of the above-entitled causes, and in any other suit or proceeding in which the same or similar issues are involved.

(Signed) THOMAS BRAZILL.

Subscribed and sworn to before me this 29th day of November, A. D. 1918.

[Notarial Seal]

(Signed) THOS. P. GLEASON,  
Notary Public in and for County of Kalamazoo, State of Michigan.

My Com. Expires Aug. 30, 1920.

(Attached hereto are Exhibits "A", "B", "C", "D" and "E").

Received copy of within affidavit this 17th day of  
February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [23]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,

vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY,      Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,              Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY,      Defendant.



**Affidavit of Katherine H. Breen.**

State of Michigan,  
County of Kalamazoo,—ss.

Katherine H. Breen, being duly sworn, deposes and says:

That she is now and for many years has been a resident of Kalamazoo, Michigan. For some seventeen or eighteen years she worked for the Clark Engine & Boiler Company which was started by her father. She worked there during the years 1903-4. Exhibit "A" hereto attached is a true photograph of an order sheet of the Clark Engine & Boiler Company and is in her handwriting. Order sheets such as this were made up immediately from orders received. [24] Every order was given a number and this number was placed on the order sheet. This explains the order No. 9463 appearing on this particular order sheet. "Jan. 30, 1904" stamped on the upper right hand corner of the order sheet means that the tank referred to in the order sheet was shipped out that day.

Affiant was a witness in the case of Dunkley Co. et al. v. Pasadena Canning Co. et al. in the United States District Court for the Southern District of California, Southern Division, Equity C-8, and testified therein, giving her testimony by deposition taken at Kalamazoo, Michigan, and affiant hereby refers to her said testimony of record in that case and hereby makes her said testimony, as therein set forth, a part of this affidavit as if fully set forth herein. Affiant will testify in the above-entitled causes or any of them, or in any other suit or proceeding involving the validity of let-

ters patent 1104175 as to the facts set forth in this affidavit.

(Signed) KATHERINE H. BREEN.

Subscribed and sworn to before me this 8th day of February, 1919.

[Notarial Seal]

(Signed) URAL S. ACKER,  
Notary Public in and for the County of Kalamazoo,  
State of Michigan.

(Attached hereto is photographic Exhibit "A".)

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [25]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY,      Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,                  Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY, a Corporation,  
Defendant.

## Affidavit of George K. Brown.

State of Michigan,  
County of Allegan,—ss

George K. Brown, being first duly sworn, deposes and [26] says: That he is now and for ten years last past has been engaged in farming on his farm at Wayland, Michigan; that affiant worked for S. J. Dunkley and Dunkley Company from the fall of 1899 to the year 1908, when the Dunkley Company went into bankruptcy. For a number of years during that period affiant was superintendent of the Hartford factory of Dunkley Company; that during the 1903 peach season, owing to a light peach crop, he was engaged at the South Haven factory. Affiant fixes this time of his employment there by memoranda dated October 15 and 21, 1903, pertaining to work done at that factory; also from the fact of his being employed with one William Brunner in the pickling department at South Haven, said Brunner having been employed there but the one season only; and also from a group

photograph containing affiant's likeness in which there appears the date "October 19, 1903"; that affiant during said peach season was also employed from time to time in repairing machines and in other mechanical work; that in connection with such employment affiant was throughout said 1903 peach season in the room daily where peaches were being peeled; that all of the peaches which were canned at the Dunkley factory during the season 1903 were peeled by hand or by small Sinclair-Scott hand peeling machines; that for this purpose a 150 foot hand peeling table was made and installed by Stewart Campbell in July and August, 1903; that along this table on either side thereof women were seated on a raised platform and peeled the peaches by hand, said peaches being afterwards dumped upon the conveyor belt and thus carried to the filling table.

That affiant while at South Haven in the peach season of 1903 saw the first experimental model peach peeling machine in the basement of the Dunkley factory while said machine was being constructed by Stewart Campbell.

That along in the latter part of October, 1903, affiant saw said first experimental machine just after a few peaches had [27] been run through it; that said machine had no lye tank attached to it, and that affiant saw no lye tank at the Dunkley factory in 1903; that said experimental machine was not used for the peeling of peaches commercially during the peach season of 1903; that no peaches were peeled in commercial quantities by a lye peach peeling machine during the peach season of 1903 at the Dunkley factory at

South Haven; that prior to the fruit season of 1903 affiant was engaged in the Kalamazoo factory of the Dunkley Company, and while there he saw in use in that factory a galvanized tank or retort about  $3\frac{1}{2}$  feet tall and about 30 inches across, made of boiler iron and having a cover that was made steam-tight by a gasket and stud bolts about  $1\frac{1}{2}$  inches or 2 inches apart; that at the time affiant saw said soup tank or retort the same was new; that in February, 1904, affiant saw in the Kalamazoo factory of Dunkley Company the tank which was later that year installed in the South Haven factory as a part of the lye peach peeling machine; that later that spring affiant saw Stewart Campbell setting up said tank at South Haven and also saw Campbell setting up and installing the roller brush apparatus therewith; that said lye tank with conveyor and said roller brush apparatus constituted the first commercial lye peach peeling machine which was installed in the Dunkley South Haven factory; that no tank for peach peeling purposes had been installed or used in said factory prior to the summer of 1904.

That affiant has seen the photographs as represented on pages 1123, 1124 and 1125 of Plaintiff's Exhibit "A" in said case of Dunkley Company et al. vs. Pasadena Canning Company, et al., entitled "Dunkley's Exhibit No. 2, Photograph 1 of Second Machine", "Dunkley's Exhibit No. 2, Photograph 2 of Second Machine" and "Dunkley's Exhibit No. 2, Photograph 3 of Second Machine", respectively, copies of which said photographs are hereto annexed and marked respectively Exhibits "A", "B" and "C" and made a



part hereof, and that said photographs are photographs of the brush part of the Dunkley first commercial lye peach-peeling machine, [28] the machine which was made and installed in Dunkley Company South Haven factory in 1904.

That affiant was a witness in said case of Dunkley Company et al. vs. Pasadena Canning Company et al. and testified therein; and affiant hereby refers to the transcript of his testimony of record in that case, and hereby makes said transcript a part of this affidavit as if fully set forth herein; that affiant will testify in the above-entitled causes, or any of them, or in any other suit or proceeding involving the validity of letters patent 1104175 to the facts as set forth in this affidavit.

(Signed) GEORGE K. BROWN.

Subscribed and sworn to before me this 29th day of November, A. D. 1918.

(Signed) FRANK CHAMBERLAIN,  
Notary Public in and for the County Allegan, State  
of Michigan.

[Notarial Seal]

My commission expires March 3, 1921.

(Attached hereto are photographs.)

Received copy of the within affidavit this 17th day  
of February, 1919.

FRED L. CHAPPELL,  
W. A. RICHARDSON,  
Attorneys for Plaintiffs.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [29]

In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,

vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY, Plaintiff,

vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY, Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,              Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY, a Corporation,  
Defendant.

**Supplemental Affidavit of George K. Brown.**

State of Michigan,  
County of Allegan,—ss.

George K. Brown, being duly sworn, deposes and says: That he is the same George K. Brown who heretofore made affidavit in the above-entitled actions dated November 29th, 1918, and makes [30] this affidavit as supplementary thereto.

That the tank referred to by affiant in lines 9 to 13, inclusive, on page 3 of said affidavit, was a round tank, cylindrical in form, the ends thereof constituting its top and bottom, the top or cover being removable, as described in affiant's former affidavit; that said tank was used exclusively for the cooking of soups and was at no time during the year 1903 used, and the same could not have been used, as a lye tank with conveyor therein for the peeling of peaches.

That the frame of Dunkley's "first experimental model peach peeling machine" referred to in affiant's said affidavit was introduced in evidence as "Defendants' Exhibit 11" in the case of Dunkley Company et al. vs. Pasadena Canning Company et al.; a copy of a photograph of said machine is hereto annexed marked "Exhibit D" and is hereby made a part hereof.

That prior to the season of 1903 there was a freight elevator in the Dunkley factory at South Haven located on the north side of the westerly part of the east wing, and that said elevator was used and operated for the transportation of supplies from one floor of said factory to the other and to and from the basement; that during the early part of the fruit season of 1903 a number of deaf and dumb men were employed at said factory some of whom took said elevator to basement and applied the brake but did not lock same; the brake became loose and elevator went to top of shaft breaking elevator and said elevator was not repaired during the peach season of 1903, but the opening in the floor therefor remained uncovered, being protected by a fence or barrier which sur-

rounded it and the posts or standards constituting the elevator shaft remained in place during that season; that in 1904 said opening in the floor was boarded over and said barrier and posts removed.

That affiant fixes the date of his employment at the Dunkley South Haven factory during the peach season of 1903 by [31] many circumstances, among which is a picture, a copy of which is hereto annexed, marked Exhibit "E" and is hereby made a part hereof; that in said picture is a photograph of affiant and also a photograph of William Brunker, who was employed at said factory and was in South Haven during the 1903 season only, and photographs of some of the deaf and dumb employees who were also employed at the Dunkley factory during the peach season of 1903; that this picture was taken during the peach season, as indicated by the fact that at least two of those appearing in the photograph are holding peaches in their hands; that affiant's photograph is the ninth from the left of those who appear in said picture as standing in the rear of those seated; that said picture was introduced in evidence in the case of Dunkley Company et al. vs. Pasadena Canning Company et al., as Defendants' Exhibit 12 and Defendants' Exhibit 4.

(Signed) GEORGE K. BROWN.

Subscribed and sworn to before me this 11th day of February, 1919.

[Notarial Seal]

(Signed) FRANK CHAMBERLAIN,  
Notary Public in and for said County of Allegan,  
State of Michigan.

My Commission expires March 3, 1921.

(Attached hereto are exhibits "D" and "E".)

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [32]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,

vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.



IN EQUITY—No. 206.

DUNKLEY COMPANY, Plaintiff,

vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY, Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY, Plaintiff,

vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY, Plaintiff,

vs.

J. F. PYLE & SON, INC., Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY, Plaintiff,

vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY, Plaintiff,

vs.

SUNLIT FRUIT COMPANY, Defendant.

**Affidavit of Mrs. George K. Brown.**

State of Michigan,

County of Allegon,—ss.

Mrs. George K. Brown, being first duly sworn, [33]

deposes and says that she resides near Wayland, State of Michigan; that she commenced working for S. J. Dunkley in 1896 and was employed at the Dunkley South Haven canning factory every year from that time until February 4, 1904, when she was married to George K. Brown, who was then superintendent of Dunkley Company's Hartford factory; that during the peach season of 1903, affiant was employed as inspectress, or forelady, over the parers, being engaged in a capacity similar to that of Mrs. Kern in overseeing the work of the women who were peeling peaches; that affiant fixes in her mind the conditions that obtained in the South Haven factory during the peach season of 1903 from the fact that it was the last season that she worked there.

That there was no lye peeling machine operated commercially in the South Haven factory during the peach season of 1903; that, on the contrary, all peaches canned at Dunkley Company's South Haven factory, during said peach season of 1903, were peeled by hand and by little Sinclair-Scott hand peeling machines; that no peaches were brought to the long peeling table, or to any of the women who were engaged in said factory to be pitted which had previously been peeled by the lye process.

That affiant gave testimony in the case of Dunkley Company et al. vs. Pasadena Canning Company et al., Equity C-8, in the United States District Court, Southern District of California, Southern Division, and affiant refers to the official transcript of said testimony and hereby makes the same a part hereof as if fully set forth herein; that affiant is willing to [34] testify

in accordance with this affidavit and the testimony given in said case, in any or all of the above-entitled causes, and in any other suit or proceeding in which the same or similar issues are involved.

(Signed) MRS. GEORGE K. BROWN,

Subscribed and sworn to before me this 29th day of November, A. D. 1918.

[Notarial Seal]

(Signed) FRANK CHAMBERLAIN,  
Notary Public in and for County of Allegon, State of Michigan.

My commission expires March 3, 1921.

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and

W. A. RICHARDSON,

Attorneys for Plaintiff.

[Endorsed:] Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [35]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,

Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY,

Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY,                      Plaintiff  
vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY,      Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,              Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY,              Defendant.

**Affidavit of Fred J. Buckley.**

State of Michigan,  
County of Kalamazoo,—ss.

Fred J. Buckley, being duly sworn on oath, deposes and says:

That he is now and for many years has been a resident of Kalamazoo, Michigan. He is manager of the Kalamazoo Foundry & Machine Company, which is frequently spoken of as Buckley's. He was connected with this company in 1903-4. Exhibits "A", "B", "C", "D", and "E", hereto attached are true photographs of carbon copies of invoices for work done by the Kalamazoo Foundry & Machine Company [36] for the Dunkley Company. The Company kept these carbon copies as a permanent record. Its ledger accounts are based on them. Most of the items referred to in these invoices were furnished for the Dunkley Company at the instance of Stewart Campbell. Campbell gave most of the orders for work that had to do with peach-peeling machinery. Some of the articles referred to in the invoices, of which photographs are

attached, were delivered to the Kalamazoo Machine & Tool Company, usually spoken of as Decker's. He thinks the articles were castings.

Affiant was a witness in the case of Dunkley Company et al. vs. Pasadena Canning Company et al. in the United States District Court for the Southern District of California, Southern Division, Equity C-8, and testified therein, giving his testimony by deposition taken at Kalamazoo, Michigan, and affiant hereby refers to his said testimony of record in that case and hereby makes his said testimony, as therein set forth, a part of this affidavit as if fully set forth herein. Affiant will testify in the above-entitled causes or any of them, or in any other suit or proceedings involving the validity of letters patent 1104175 as to the facts set forth in this affidavit.

(Signed) FRED J. BUCKLEY,

Subscribed and sworn to before me this 8th day of February, 1919.

[Notarial Seal]

(Signed) URAL S. ACKER.

Notary Public in and for the County of Kalamazoo,  
State of Michigan.

(Attached hereto are photographic exhibits "A", "B", "C", "D" and "E".)

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.



[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [37]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERS  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,

vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY, Plaintiff,

vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY, Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,                  Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY,                  Defendant.

**Affidavit of Kemper B. Campbell.**

State of California,  
County of Los Angeles,—ss.

Kemper B. Campbell, being first duly sworn, deposes and says: That he is one of the attorneys for the defendants in the above-entitled causes; that he was made an attorney of record in said causes at the time of the trial thereof on or about March [38] 28th, 1916, as a matter of courtesy only and upon motion of

William K. White, one of defendants' attorneys; that he was present at the trial of said causes solely by reason of a suit on the same patent having been instituted against certain of affiant's clients in the United States District Court in the Southern District of California, Southern Division, entitled Dunkley Company et al. vs. Pasadena Canning Company et al., Equity C-8; that affiant appeared at the trial of the above entitled causes to observe the proof develop relative to the subject matter of the litigation; that affiant had no control and exercised no control over the trial or the preparation for trial of said causes or any of them; that affiant at the time of the trial of said causes had not been retained or employed by the defendants therein or by any of them, or by anyone on their behalf, to appear for them at the trial of said causes or any of them; that affiant was retained by defendants in the above entitled causes as an attorney in said causes on or about the 11th day of July, 1918, long subsequent to the trial of the above entitled causes; that affiant was attorney for the defendants in said case of Dunkley Company et al. vs. Pasadena Canning Company et al. filed in the United States District Court, Southern District of California, Southern Division, Equity C-8, filed on December 21st, 1915; that on or about January 11th, 1918, said cause was by the court set for trial on May 1st, 1918, and the date of trial thereof thereafter continued, so that the actual trial occurred May 21st, 1918, to July 6th, 1918.

That affiant had charge of the preparation of said cause of Dunkley Company et al. vs. Pasadena Can-

ning Company et al. for trial and during the preparation of said cause for trial additional evidence from that introduced in the trial of the above entitled causes was discovered, which evidence is material and relevant to the issues in each of the above entitled causes [39] and not merely cumulative and is as follows:

(a)

During the preparation of said cause for trial evidence of a prior use during the years 1894, 1895 and subsequent years of a machine to peel peaches using a lye process was discovered, said use being by Ida L. McDermett and W. R. McDermett at Baird, Callahan County, in the State of Texas, and consisted of a machine or device described as follows: a large metal vat or tank divided into three compartments; under one of these was a fire box to heat a solution of lye placed in said tank, clear water being placed in the other two tanks. In the compartment containing the lye solution was a perforated revolving metal cylinder or drum, so arranged that by means of a lever suspended overhead said cylinder or drum could be raised from that compartment and moved at will to the other compartments, the entire apparatus being mounted on a wooden frame. Peaches were peeled by the use of said machine in the following manner: a fire was provided under the compartment containing the lye solution. The revolving perforated cylinder or drum was partially filled with peaches, immersed and revolved in the hot lye a sufficient length of time to disintegrate the peeling, then raised by means of a lever and transferred to the other compartments and

revolved in them to wash off the peelings which the lye had previously disintegrated. The revolving cylinder or drum being perforated all around, on being immersed in the water tanks the water would enter the drum and wash the peeling off the peaches, as aforesaid. That seven of said machines were manufactured by said McDermetts and sold to various persons in the state of Texas and by them used for the purpose of peeling peaches for the market.

That proof of the successful use of said machine for peeling peaches as aforesaid from the year 1894 on was made at the trial of said cause of Dunkley et al. vs. Pasadena [40] Canning Company et al. by the testimony of the following credible persons: W. R. McDermett, now of Pecos, Texas, Mrs. T. H. Brigrance of Fort Worth, Texas, A. T. Young of Callahan County, Texas, B. L. Russell of Baird, Texas, and Mrs. B. L. Russell of Baird, Texas; that said witnesses are willing to testify in the above entitled causes to the use of said machine in the State of Texas for the peeling of peaches for the market from the year 1894 on, as aforesaid; that affidavits of said witnesses, stating the facts of said use and their willingness to testify before this court to said facts have been filed herein in support of the motion pending before this court; that the testimony of said witnesses to the facts of such use can be produced before this court.

That the evidence of said witnesses is newly discovered and on information and belief affiant states that said evidence was not known to any of the counsel or the defendants in the above entitled cause at the

time of the trial of said causes. That affiant learned of said machine and said use at Baird, Texas, in the following manner: that during the latter part of the month of January in the year 1918, one Earnest Aycock, a resident of the City of Glendale, State of California, met affiant at the residence of affiant's father-in-law, D. J. Hibben, in the City of Glendale, and informed affiant that he, the said Earnest Aycock, had known one W. R. McDermett at Baird, Callahan County, Texas, and said McDermett had invented and used a machine for the purpose of peeling peaches by lye, said Aycock fixing the date of said use by McDermett as being prior to 1900, about 1895 or 1896. That thereupon, pursuant to said information, affiant sent a letter to W. R. McDermett, dated February 11th, 1918, addressed to him at Baird, Callahan County, Texas, stating that affiant was interested in discovering whether said McDermett had ever used a machine to peel peaches with a lye process. In March, 1918, affiant received an answer to said communication [41] from said McDermett from Pecos, Texas, dated March 3rd, 1918, in which letter said McDermett stated that he had used a machine for that purpose and described said machine; copies of said letters are hereto attached, marked Exhibits "A" and "B" respectively and made a part hereof as though set forth at length; that after receiving said letter from said McDermett affiant caused an extended investigation to be made in Texas relative to the use of the lye process and machines therewith, sending to Texas for that purpose one C. L. Bagley, a member of the bar of the State of California; that as a result of said



investigation, witnesses familiar with the use of the lye process and said machine as aforesaid were dis-

That on or about October 1, 1918, at the cannery covered.

of the Pasadena Canning Company, at Pasadena, California, a demonstration of said McDermett machine was made in the presence of affiant and other persons, said machine being operated under the direction of Mr. George E. Grier of said Pasadena Canning Company. That peaches were peeled at said demonstration by said machine, good, firm fruit being selected, and after having been subjected to the lye treatment and the peelings thereby disintegrated, the peaches were peeled in the cylinder of said machine and revolved in one of the compartments of the tank of said machine, which was partially filled with clear water, thirteen revolutions in sixteen seconds; thereupon, the cylinder was removed into the second compartment of clear water, and revolved eight revolutions in ten seconds; thereupon the cylinder was opened and the peaches removed. The peaches were perfectly peeled. Two other similar experiments were made and with the same result.

(b)

That upon the opening of the above-entitled causes or any of them for the reception of further evidence, defendants will prove to the Court the use of a machine to peel peaches, using the [42] lye process by W. R. Roach & Company at their cannery in Hart, Michigan, commencing with the year 1902, evidence of said use by W. R. Roach & Company being discovered through a letter dated November 22, 1917,

from W. R. Roach of Hart, Michigan, to Mr. George E. Grier, one of the defendants in said cause of Dunkley Company et al. vs. Pasadena Canning Company et al. Said newly discovered evidence consists of proof that during the year 1902, about the middle of the peach peeling season, to wit, about September 15th of that year, a machine was devised to peel peaches with the lye process and used at said cannery of W. R. Roach & Company at Hart, Michigan, as follows:—a revolving cylinder of wire mesh used for washing peas, about ten or twelve feet long and four and one-half feet in diameter, mounted on a wooden frame and known as a “squirrel cage”, was used and operated for the purpose of peeling peaches as follows:—the previously halved and pitted peaches were placed in perforated pails and immersed in the lye solution and then dumped into a hopper; from this hopper they were carried by means of a conveyor or elevator to the cylinder into which they poured. A perforated water pipe was mounted within and parallel to the cylinder, from which sprays of water under pressure descended upon the peaches in the revolving cylinder, removing the disintegrated peeling from and washing the peaches. The cylinder was placed at an angle so that the peaches worked towards the opposite end from which they entered, finally being caught in pails or pans at such opposite end. By means of said machine about two-thirds of the peach pack of the cannery of said W. R. Roach & Company at Hart, Michigan, was peeled during the year 1902. That said device or machine was used at said cannery by said W. R. Roach & Company from

the year 1902 on. That the predecessors in business of said W. R. Roach & Company at Hart, Michigan, for a number of years prior to 1902, to wit: from about 1894 on, had peeled peaches by means of the lye process in the following manner:—the peaches to be peeled were halved and [43] pitted and then placed in perforated pails and immersed in a tank containing a lye solution a sufficient length of time to disintegrate the peelings, the pails being then taken out of the solution, placed on the floor and the peaches washed off with cold water by means of a hose under strong pressure. That this method of peeling peaches was used by W. R. Roach & Company at their said cannery in Hart, Michigan, during the first part of the season of 1902 and prior to the use of said machine as aforesaid.

That affiant on a trip to Michigan and vicinity during the months of February and March, 1918, interviewed witnesses who had made or used this device at said factory; that at the trial of said cause of Dunkley Company vs. Pasadena Canning Company proof of said use and said machine was produced to that court by the following credible witnesses: E. S. Frey, W. R. McRae, and Mrs. Lettie La Vaque of Hart, Michigan, and Mrs. Olive S. Kidder, now of Detroit, Michigan, which said witness had been employed at said factory of W. R. Roach & Company at Hart, Michigan, in the year 1902 and subsequent to said year. That said witnesses are ready, willing and able to testify to the above-entitled causes or any of them and affidavits of said persons as to their knowledge of said use and their willingness to testify are

filed herein in support of the motion now pending before this court.

That a photograph of a machine of the identical type used by W. R. Roach & Company in 1902 and thereafter is annexed hereto and marked Exhibit "C" and is hereby made a part hereof. That the identical machine from which said photograph, Exhibit "C", was taken was used as an exhibit in the case of Dunkley Company vs. California Packing Corporation before the District Court for the United States District Court, Southern District of New York, also involving the validity of letters patent No. 1,104,175, and peaches were successfully peeled by said machine in demonstration before [44] the Court.

(c)

That during the preparation of said cause of Dunkley Company et al. vs. Pasadena Canning Company et al. for trial there was called to affiant's attention for the first time a publication known as "Archdeacon's Kitchen Cabinet", which was published in 1876; said publication described the lye process for peeling peaches as follows: Commencing at Page 133 of said publication:

#### "CANNING OF FRUITS.

---

"To Can Fresh Peaches by The Latest Scientific Method.—Commercial.

"Have conveniently arranged, a farmer's 25-gallon dairy kettle. And a cooling tub, so arranged that cold water may flow in at the bottom through a pipe, and an opening 4 inches below

the top, for an overflow, that the water may run out as fast as it flows in. To keep it cold, provide also, a 2 or 4-quart dipper, with a long handle, and  $\frac{1}{2}$  in. perforations in the bottom. Dissolve a can of concentrated lye in boiling water in the kettle and keep it boiling hot. Fill the dipped  $\frac{3}{4}$  full of hard but ripe peaches; lay out the soft ones and pare them by hand. Now, hold the dipper containing the peaches, immersed in the boiling lye a few minutes, until the skin is a little slippery and soft, which the operator must learn more exactly by practice. When the peaches are scalded just enough, raise it out and drain a moment, then quickly immerse into the cold water, and by a shaking motion of the dipper wash out the lye, and by the rolling motion of the peaches rub off their shriveled and wrinkled skins, which should leave them clean and white. Have also another tub of cold water, in which to immerse the dipper of peaches, and wash clean, then drain, and pass them to be cut in halves, lengthwise of the pits; remove the pits and put the fruit into cans, having in each two tablespoonsful of sugar; then fill them with boiling water and solder up tight, and process 15 or 20 minutes without venting, and cool immediately. By this method of removing the skins, about 25 per cent of labor and about the same amount in fruit will be saved. By this hot bath the pores of the fruit are opened, and the air to some extent is forced out. And by the sudden immersion in a cold bath the pores



are again closed, which better preserves the flavor, and the peaches. Great care, however, must be taken to keep the lye, boiling hot, strong, clear and clean, renewing when necessary; and also the cold water baths must be kept clean and cold, by using ice if necessary. If these conditions are not strictly maintained the peaches may turn dark colored. But if all the work is performed with care and skill, superior goods will be produced at less [45] cost. The early and late white Crawfords are the best variety of peaches for canning, and should be fresh picked from the trees as nearly as possible."

that said publication has been in possession of one Charles M. Brodie of San Jose, California, for twenty-five years last past, having been given to said Brodie by his father; that said Brodie testified at the trial of said Dunkley Company et al. vs. Pasadena Canning Company et al., and is willing to testify in the above entitled causes or any of them to the fact of such ownership of said publication, laying the foundation for the introduction of the same in evidence, and an affidavit of said Brodie is filed herein in support of the motion pending before this court.

That said publication is newly discovered evidence and on information and belief affiant states that the same was not known to any of the counsel or any of the defendants in the above-entitled causes at the time of the trial thereof; that said evidence is material and relevant to the issues in the above-entitled causes.



(d)

That on the opening of the above-entitled causes or any of them for the reception of further evidence, defendants will prove to the Court the use of a machine to peel peaches using the lye process near San Jose, California, by J. F. Pyle & Sons, commencing with the year 1901, said machine being described as follows:

A lye tank for the lye treatment or preliminary treatment of the peaches. Associated therewith a water tank, into which the lye treated peaches were delivered from the lye tank by means of an endless traveling carrier or flight conveyor which worked into, through and out of the lye or caustic solution bath of the lye tank and removed the peaches therefrom and, as carried over the delivery end of said lye tank, dropped the lye-treated peaches into the water contained in the water tank, the water tank being arranged end to end with the lye tank. Within the water tank there was another endless carrier or flight conveyor which removed [46] the peaches from within the water tank and deposited or discharged the same onto a horizontal and downwardly disposed vibrating or shaking table, the receiving end of which was situated at the discharge end of the water tank. Situated above the endless conveyor, working in the water tank for the removal of the peaches, there was a spray water pipe—that is, a perforated water pipe which received water therein under pressure and which water was discharged from the pipe as jet streams onto the lye-treated fruit as removed from within the water tank by the endless conveyor or carrier. At the head of the vibrating or shaking table,

on which the peaches were deposited after leaving the water tank, a slight distance above the table was arranged a second perforated coiled water pipe, the jet streams of water issuing therefrom playing or being directed onto the peaches as the same moved beneath the pipe under the influence of the vibrating action of the shaking table.

In the use of said machine or apparatus the peelings of the peaches were disintegrated by the hot lye solution in the first tank and said disintegrated peeling was removed by the action of the water and water jet streams issuing from the nozzles and perforated pipes above referred to. In said apparatus there were four separate means of turning the fruit: first, the elevator from the water tank; second, the dropping of the fruit onto the agitating table; third, the action of the agitating table; and, fourth, the dropping of the fruit from the agitating table into the discharge boxes connected therewith.

(e)

That during the months of February and March, 1918, affiant spent six weeks' time in the eastern part of the United States, particularly in the State of Michigan, investigating the claims of S. J. Dunkley and his son, Melville E. Dunkley, as asserted at the trial of the above entitled causes, the claims of said S. J. Dunkley and his said son asserted at the trial of the above-entitled [47] causes being that a model machine was made in 1902 and that peaches were peeled by it at that time; that during the peach season of 1903 a commercial machine was made which was operated extensively, approximately seventy-five per

cent (75%) of the entire pack of peaches being peeled by said lye peeling machine. These claims were made notwithstanding the fact that during the Interference Proceedings in the Patent Office in 1910 said S. J. Dunkley and his said son had both testified that the first or model machine was made in the summer of 1903; and in 1915 in the cause of Dunkley Company vs. California Canneries Company, before this very Court, S. J. Dunkley in response to a searching examination by the Court, did not testify that the first or model machine was made and used prior to 1903. That affiant during his said investigation located numerous photographs in the possession of various persons of the interior of the Dunkley factory taken during the year 1903 and many other documents which conclusively establish the fact that no commercial machine was in operation in said factory during the year 1903; that affiant interviewed a great many persons who were employed in said Dunkley factory at South Haven, Michigan, during the years 1902, 1903 and 1904; that some of those interviewed informed affiant that they were present when the original model machine was being constructed and that said model machine was constructed during the fall of 1903 and subsequent to July of that year, and not in 1902, as testified by the two Dunkleys, and that said model machine was first tried out in October, 1903, and that the first commercial machine was made during the spring of 1904 and first tried out and used during the late summer and fall of 1904; that said persons so employed in the said Dunkley factory during said years informed affiant that no lye peeling

machine of any kind was used commercially by said S. J. Dunkley or Dunkley Company during the year 1903, but, on the contrary, during the season of 1903 all the peaches packed at said South Haven factory were peeled by the [48] use of knives; that at the trial of said cause of Dunkley Company et al. vs. Pasadena Canning Company et al. before the Honorable Oscar A. Trippet, said photographs and documents were introduced in evidence and more than thirty of said former employees in the Dunkley factory and ten other witnesses testified as aforesaid, and in the memorandum opinion filed in said case the Court found that the Dunkley conception was not made until 1903; that the affidavits of many credible persons who testified at the trial of said cause of Dunkley Company et al. vs. Pasadena Canning Company et al. are filed herein in support of this motion and that each of said witnesses is ready, willing and able to testify in the above entitled causes or any of them.

That the testimony of each and all of said witnesses is newly discovered evidence and such evidence could not with reasonable diligence have been produced at the trial of the above-entitled actions.

That on the trial of the above-entitled causes, Melville E. Dunkley testified on behalf of the plaintiff herein, that the records of the Dunkley Company relative to the construction of the first machine and tank by the Dunkleys were destroyed by fire, his testimony in that regard being as follows (San Francisco Record, 444, 445):

“Q. Have you no records whatever showing the purchase of any parts for this first experimental model machine or the first commercial

machine? A. The only record we have at the present time on this first machine covers the purchase of the first simple experimental tank that was built, that was used with this in 1903; otherwise we have practically no records left. What few records were left were at South Haven covering the transactions of the factory work at South Haven, and were burned when we had a complete fire loss in 1912."

and on appeal from the decision of this Honorable Court in the above-entitled causes, the appellee in its brief stated the following with reference to the loss of the records of the Dunkley Company by fire: [49]

"Another criticism made against the Dunkleys is that they produced no written records, but counsel seem to have overlooked the testimony given by M. E. Dunkley at page 445 of the record to the effect that in 1912 the Dunkley cannery was destroyed by fire and their records were lost." (Reply Brief Appellee, p. 59.)

That at the trial of the case of Dunkley Company et al. vs. Pasadena Canning Company et al. it was shown that the Dunkley factory at South Haven had been abandoned from the year 1908 to 1912, and that there were no books of account or records at this abandoned factory prior to the fire. This was proven by witnesses William Spencer, William McEwing, Leander Kern and Martin De Loof, and Melville Dunkley, testifying in said cause, repudiated his testimony given before this Honorable Court at the time of the trial of the above-entitled causes, and admitted



that he did not know that there were any books or records in the South Haven factory at the time of trial, his testimony in that regard being as follows:

“MR. HENEY.—Q. I think I will have to ask you to say yes or no. I am not asking you what is in them now. I ask you if you mean to say that you know that there was in that factory at the time it was burned any book or record that contained any evidence relating to the time of building, or the material that went into the experimental model machine, or the first commercial machine.

“MR. CHAPPELL.—That is incompetent, immaterial. The witness has not said anything about any records of any materiality to the case; not proper cross-examination.

“MR. BLAKESLEE.—The witness is not competent to testify whether it be evidence or not.

“THE COURT.—I would like to have that testimony explained, what he meant in the San Francisco case. The objection will be overruled.

“MR. BLAKESLEE.—Exception.

“A. Read the question, please?

“(Last question read by the reporter.)

“A. Why I wasn't there when that fire started. I don't see how I could be expected to say that I knew anything was in there. I hadn't been around there for a couple of years previous to that fire.

“By MR. HENEY.—Q. Then you didn't mean to say that you knew there was any book or record in there in the San Francisco trial?



"MR. BLAKESLEE.—Same objection.

"A. No, sir; I don't think I did say so.

"By MR. HENEY.—Q. At any rate, if you did say so, you didn't mean to say that you did?

"A. No, sir." (L. A. Rec. pp. 1401, 1402.)

[50]

That during the preparation of said cause of Dunkley Company et al. vs. Pasadena Canning Company et al. for trial, there was called to affiant's attention an article in the South Haven Daily Tribune, published October 1st, 1903, which described the Dunkley factory at South Haven, Michigan; that the writer of said article, Lyman L. Crosthwaite, was produced at the trial of said cause of Dunkley Company et al. vs. Pasadena Canning Company et al. and testified, after refreshing his recollection from said article, as to the means and methods of peeling peaches in said cannery in the year 1903, his said testimony appearing in his affidavit filed herein in support of the motion now pending before this court.

That subsequent to the trial of the above entitled causes and subsequent to the trial of the cause of Dunkley Company et al. vs. Pasadena Canning Company et al., there was called to affiant's attention by one Bert McFarland, of South Haven, Michigan, an article in the Tribune-Messenger, a daily newspaper published in South Haven, Michigan, during the year 1904, and thereafter, in the issue of said paper for April 22, 1904; that said article was written by said Lyman L. Crosthwaite, as appears from his affidavit filed herein, in support of the motion now pending before this court.

That affiant is informed and believes and so states, that S. J. Dunkley, in the year 1904, was a stockholder in the corporation owning said Tribune-Messenger and that said S. J. Dunkley became a director of said corporation and said Tribune-Messenger in the year 1905.

That at the trial of the cause of Dunkley Company et al. vs. Pasadena Canning Company et al. the plaintiff produced and introduced in evidence certain correspondence between S. J. Dunkley and one Edwin Norton, and certain correspondence between S. J. Dunkley and one O. W. Norton, who was a brother of the said [51] Edwin Norton. That said Edwin Norton was a stockholder largely interested financially in the Dunkley Company, during the years 1901 to 1908, said correspondence appearing at pages 4112 to 4172 of the record of said cause of Dunkley Company vs. Pasadena Canning Company et al. and by this reference made a part hereof.

That at the trial of the above-entitled causes, Melville Dunkley, testifying on behalf of the plaintiff, denied that a long hand peeling table was used at the Dunkley cannery at South Haven in the year 1903 but, on the contrary, testified that the same was put in said cannery in the year 1904 and that it was not a peeling table but an inspection table. That on the trial of the case of Dunkley Company vs. Pasadena Canning Company et al. Melville Dunkley admitted that the long table was at said cannery in the year 1903. (L. A. Rec. 1449.) [52]

(f)

That at the trial of said cause of Dunkley Company

et al. vs. Pasadena Canning Company et al. one Robert I. Bentley testified that during the year 1902 he was general manager of the California Fruit Canners Association which owned and operated a cannery at Fresno, California, during the year 1902 and 1903; that during the year 1902 at said cannery, said cannery being in charge of one C. J. Vernon, a machine was used to peel peaches, said machine being an adaptation of the Baker-Chalker orange washer; that in said year of 1902 at said cannery, practically the entire peach pack of said cannery was peeled by means of said machine, amounting to approximately 2,400,000 two and one-half pound cans; that said machine was likewise used at said cannery in the year 1903 and a pack of approximately the same size was peeled in 1903 by said machine; that in the year 1903 said California Fruit Canners Association installed another of said machines at its cannery at Hanford, California, and used the same for the purpose of peeling peaches which were being prepared for drying; that said Bentley testified that on said machine jets or sprays of water were used to peel the peaches; that at the trial of Dunkley Company et al. vs. Pasadena Canning Company et al. one Fred L. Stebler testified that he, said Stebler, during the year 1902, had visited the said cannery of the California Fruit Canners Association, at Fresno, California, and on said visit had observed in said cannery a machine used to peel peaches, said machine being an adaptation of the Baker-Chalker orange washer, using sprays or jets of water in addition to the brushes for the purpose of peeling the peaches; that affidavits of said Bentley

and said Stebler are filed herein in support of the motion now pending before this Court.

That at the trial of said cause of Dunkley Company et al. vs. Pasadena Canning Company et al. a test was had at Selma, California, in the presence of the Court, and a Dunkley brush [53] machine used to peel peaches; that witnesses who observed said demonstration and who had seen the Baker-Chalker machine used at Fresno in the year 1902 at the cannery of the California Fruit Canners Association, testified in said cause that said Dunkley machine so demonstrated at Selma, and the Baker-Chalker machine operated at Fresno, were identical in construction and in mode of operation except that on the Dunkley machine there were three pipes with one row of perforations in each, and small brushes were mounted upon the conveyor belt, while on the Baker-Chalker machine there was one water pipe with three separate rows of perforations for delivering the water upon the peaches, and there were no brushes mounted upon the conveyor belt, said witnesses being Newton Lushbaugh, J. B. Cobbey, S. R. Combs and H. R. Baker; that affidavits of said witnesses are filed herein in support of the motion now pending before the Court.

That in the trial of the cause of Dunkley Company vs. California Packing Corporation before the United States District Court, Southern District of New York, during the month of October, 1918, a Baker-Chalker orange washer, such as was used at the cannery of the California Fruit Canners Association at Fresno in 1902, was introduced in evidence and a demonstration had before the Court, said machine peeling

peaches in the presence of the Court; that the Hon. A. N. Hand, the Judge presiding at said trial at the time of said test, made the following partial finding, using the following language, as appears in the transcript of the evidence introduced on said trial:

“BAKER-CHALKER BRUSHER MACHINE LIKE VERNON USED.

“This machine has never heretofore been offered in evidence. A pressure of thirty-five pound spray was applied; the peaches treated in a lye bath, and passed over brushes were satisfactorily brushed, the skin being well removed from crevices. The pressure of the Dunkley machine was thirty-five pounds also and the speed the same.” [54]

That the testimony of said witnesses can be produced before this court on a rehearing of the above-entitled causes, or any of them.

(g)

That at the trial of said Dunkley Company et al. vs. Pasadena Canning Company et al., evidence of the use by one David W. Hobson, commencing in the year 1899, of a machine for the purpose of preparing prunes for drying was introduced, said machine consisting of a tank into which a lye solution was put, a swinging prune dipping basket arranged to swing into and out of the lye solution within the lye tank, a hopper for receiving the lye-treated fruit as discharged from the swinging basket, together with a vibratory or shaking table, above which shaking table and adjacent to the discharge section of the hopper

receiving the lye-treated fruit, there was a water spray pipe provided with two jet outlet nozzles from which water under pressure was ejected onto the lye-treated fruit as delivered from the hopper on to the head end of the shaking or vibrating table. An affidavit of said David W. Hobson, describing said machine, is filed herein in support of the motion pending before this court.

That the motion in support of which this affidavit is presented was not filed prior to the date of its filing because the foregoing newly discovered evidence was not discovered until the spring of 1918 and all of said evidence was presented to the court at the trial of the case of Dunkley Company et al. vs. Pasadena Canning Company et al.; said trial of said case commenced May 24, 1918, and continued until the early part of July, 1918; that immediately upon the termination of said trial the preparation of this motion was commenced and diligently pursued to the time of the filing of said motion.

KEMPER B. CAMPBELL.

Subscribed and sworn to before me this 16th day of February, 1919.

[Seal]

C. L. BAGLEY,  
Notary Public in and for the County of Los Angeles,  
State of California. [55]



EXHIBIT "A".

February 11th, 1918.

W. R. McDermott, Esq.,  
Baird,  
Callahan County,  
Texas.

Dear Sir:

I enclose herewith a resume of a controversy now pending in the United States District Court here. I am informed that you were one of the pioneer users of the lye peeling process and no doubt have valuable information in regard to this matter.

I write particularly to ascertain whether you ever employed a *machine* for the removal of the disintegrated peeling from the peaches by means of the application of jets of water. If so, would like to get a description of the machine and the dates of its use.

Thanking you in advance for such information as you may give us, I beg to remain

Yours very truly,

KBC/NT.

Enc. [56]

EXHIBIT "B".

PECOS, Texas, Mar. 3rd, 1918.

Kemper B. Campbell,  
Los Angeles.

Dear Sir:

Your favor of Feb. 11th to hand and in reply will say, we patented a peach peeling process in 1893, after that we invented a machine for using the process.

(The lye process.) This machine consisted of three or more vats connected and set in a frame with a horizontal bar above with a roller on this bar with a leaver attached. A furnace to heat the fluid. We then had a perforated drum to revolve in the vats, with a bale by means of the roller and leaver above we could raise the drum and remove it to the next vat and so on until the peaches were washed clean, then open the lid to the drum and empty them without handling them. This machine was not patented but is still in use in some sections. This is about as good a description as I can give. The patent to the process expired in 1910.

Hoping that this may be of service to you,

I am very truly,

(Signed) W. R. McDERMETT,

Pecos, Texas.

Box # 364.

(Attached hereto is Exhibit "C.")

Received copy of the within affidavit this 17th day of Feby., 1919.

FRED L. CHAPPELL and

W. A. RICHARDSON,

Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [57]

In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,

vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY, Plaintiff,

vs.

ANDERSON-BARNROVER MANU-  
FACTURING COMPANY, Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,              Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY, a Corporation,  
Defendant.

**Affidavit of Stewart Campbell.**

State of California,  
County of Alameda,—ss.

Stewart Campbell, being first duly sworn, deposes and says:

That he is now and for 14 years has been a resident of Berkeley, California. He is the same Stewart Campbell who testified in the above-entitled causes.

Affiant has seen pages 476, 477 and 478 of Plaintiff's Exhibit "F" in the case [58] of Dunkley Company et al. vs. Pasadena Canning Company et al. in the United States District Court for the Southern District of California, Southern Division, Equity C-8, comprising Patent Appeal Docket Number 790 (Dunkley-Beekhuis Interference) and containing therein certain photographs entitled respectively "Dunkley's Exhibit No. 2, Photograph 1 of Second Machine," "Dunkley's Exhibit No. 2, Photograph 2 of Second Machine", and "Dunkley's Exhibit No. 2, Photograph 3 of Second Machine", copies of which photographs are hereto attached, made a part of this affidavit, and marked and designated respectively Exhibits "A", "B" and "C" hereof; that said photographs are true and correct photographs of the brush portion of the peach peeling machine which was built under his direction in the winter of 1903-4, and which was set up under his direction prior to the commencement of the 1904 peach canning season at the Dunkley factory at South Haven, Michigan, at the place in said factory previously occupied by the long hand peeling table. That the said machine was the second brush machine for removing the previously disintegrated peeling from peaches made for Dunkley Company, said machine being designated in the above-entitled causes and in the Pasadena Canning Company case as "the Dunkley first commercial machine"; that the first machine made for Dunkley was made in the fall of 1903 and was referred to in said actions as "the Dunkley experimental model machine".

Referring to affiant's testimony in the above-entitled case, appearing at pages 529-30 of the record of said case on appeal, in which he testified as follows:

"Mr. WHITE.—Q. This morning you mentioned a peach-peeling machine constructed at the Dunkley factory. I request that you give the history of that machine from the beginning to the end, if you know the same.

"A. In 1903 Mr. Dunkley, in I think about August, along in August, told me that he wanted me to build a peeling machine for peeling peaches; that he had a man making experiments on the lye strength of it and so forth, as to how to take the peeling off the peach, and he wanted me to construct the machine, and I was to see him and get the data on the lye, what was required and go ahead and [59] build the machine; that was while I was working on this peach-table, peach-peeling table. After I got through, I went over the next day, or a day or so afterwards to Mr. Brunker, who was the one that was making the test on the lye; it was in the glass room attached to the main canning room, and he showed me what he had done with the lye and gave me an estimate of the time that they ought to be in the lye and the strength of the lye; he was using a hand brush and water after putting them through the lye, using the hand brush and water and rubbing the peeling off, and so from that work on the table I was figur-



ing out just how to go to work at it, to construct it, and I think it was on the 9th, I am not certain, that it struck me about how to tackle it,"

affiant did not intend thereby to fix August 9 as the exact date at which he started work on the Dunkley first experimental model peach peeling machine, or as the date at which it occurred to him how to build the machine. The fact is that before affiant started work on said machine or planned the machine, there had been substantially completed and installed the long peach peeling table which was built and installed at the Dunkley factory at South Haven by him and under his direction in the summer of 1903, the last supply of lumber being purchased for the construction of said table on August 4, 1903. Affiant fixes this date from the books of Noud Lumber Company. That it required some time after this date to complete the table which, with a filling table built in connection therewith, was 210 feet long. A photograph of the "hand peeling table" 150 feet in length is hereto attached marked Exhibit "D" and made a part hereof. A photograph of the "filling table" 60 feet long is hereto attached marked Exhibit "E" and made a part hereof.

Referring to affiant's testimony in the above-entitled case appearing on page 528 of the record of said case on appeal, in which he testified as follows:

"Q. You have referred to a lye machine; please state the circumstances under which that machine was made and what it was and when it was made.

"A. Well, they had to have a lye machine to lye the peaches for the peeler and about August,

1903, the first experimenting with the lyeing of the peaches [60] was made, and then I conceived the peeler—they wanted a lye machine for lyeing the peaches; Mr. S. J. Dunkley gave me the order to construct a lye-machine so I went to work and made a drawing of the tank after I had figured out the way I wanted it, I made a drawing of the tank and handed it to him to have the tank made of boiler-iron, and he gave the order at Kalamazoo, either gave it or sent it to Kalamazoo.”

affiant did not intend thereby to convey the meaning that said lye tank was made immediately after August, 1903, nor did affiant so state, but on the contrary affiant intended to make it clear (and in other parts of his testimony he is of the opinion that he did so), and he now states the fact to be that the drawings for the first tank were made after the close of the 1903 peach season and after the tryouts of the model machine which were had in October of that year, and an order was thereupon given to the Clark Engine and Boiler Company of Kalamazoo and said first tank was thereafter constructed and was delivered to Dunkley Company about February 1st, 1904.

That affiant recognizes Exhibits “A”, “B” and “C” as photographs of said machine because of many unmistakable peculiarities of construction of said machine, among which are the splices which appear on the lower portions of the supports or legs of said machine; that it was originally intended by affiant to make said machine of less height, but subsequently affiant concluded that the machine should be raised

and the supports were changed by utilizing the braces as indicated in the photographs.

Affiant was a witness in the case of Dunkley Company et al. vs. Pasadena Canning Company et al. in the United States District Court for the Southern District of California, Southern Division, Equity C-8, and testified therein, and affiant hereby refers to the transcript of his testimony of record in that case, and hereby makes said transcript a part of this affidavit as if fully set forth herein; that affiant will testify in the above [61] entitled causes or any of them in accordance with this affidavit.

STEWART L. CAMPBELL.

Subscribed and sworn to before me this 23d day of February, 1919.

[Seal]

J. L. RANKIN,

Notary Public in and for the County of Alameda,  
State of California.

(Attached hereto are exhibits "A", "B", "C", "D" and "E".)

[Endorsed]: Filed Feb. 24, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [62]

In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

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IN EQUITY—No. 206.

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vs.

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IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,              Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY, a Corporation,  
Defendant.

**Affidavit of Robert H. Clark.**

State of Michigan,

County of Kalamazoo,—ss.

Robert H. Clark, being duly sworn, deposes and says:

That he is now and for many years has been a resident of Kalamazoo, Michigan. From about the 7th or 9th of September, 1904, until 1916, he was the bookkeeper for the Clark Engine & Boiler Co., which

company was started by his father. Exhibit "A" [63] hereunto attached is a true photograph of page 331 of Ledger E of the Clark Engine & Boiler Company, and Exhibit "B" attached hereto is a true photograph of page 432 of the same ledger. These two pages show the ledger account of the Clark Engine & Boiler Company with the Dunkley Company for the years 1903-4. Referring to page 331, the entries on the debt side of the ledger for September 9, September 26 and September 30, 1904, were made by him and are in his handwriting. All of the entries on page 432 of said ledger were made by him and are in his handwriting. When he started as bookkeeper, all invoices, before being sent out, were copied into a letter press invoice book and posted in the ledger, the posting being done the same day. All ledger entries made by him and appearing on pages 331 and 432 of the ledger were based upon such letter press copies of invoices.

Affiant was a witness in the case of Dunkley Co. et al. vs. Pasadena Canning Co. et. al. in the United States District Court for the Southern District of California, Southern Division, Equity C-8, and testified therein, giving his testimony by deposition taken at Kalamazoo, Michigan, and affiant hereby refers to his said testimony of record in that case and hereby makes his said testimony, as therein set forth, a part of this affidavit as if fully set forth herein. Affiant will testify in the above-entitled causes or any of them, or in any other suit or proceeding involving the validity of letters patent 1,104,175 as to the facts set forth in this affidavit.

(Signed) ROBERT H. CLARK.



Subscribed and sworn to before me this 8th day of February, 1919.

(Signed) URAL S. ACKER,

[Notarial Seal]

Notary Public in and for the County of Kalamazoo,  
State of Michigan. [64]

(Attached hereto are exhibits "A" and "B".)

Received copy of the within Affidavit this 17th day  
of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [65]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a corporation,  
Plaintiff,  
vs.

CENTRAL CALIFORNIA CANNERS  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,  
vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,  
vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY, Plaintiff,  
vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY, Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY, Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY, Plaintiff,  
vs.

J. F. PYLE & SON, INC., Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY, Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY, Plaintiff,

vs.

SUNLIT FRUIT COMPANY, a Corporation,  
Defendant.

**First Affidavit of Lyman L. Crosthwaite.**

[66]

State of Illinois,  
County of Cook,—ss.

Lyman L. Crosthwaite, being first duly sworn, deposes and says: That he is now employed as a proofreader on the "Daily News", published in Chicago, Illinois; that affiant lived in South Haven from the year 1903 to 1906 and was employed as a reporter on the "South Haven Tribune"; that in the course of his employment upon that paper he wrote a series of articles dealing with various industries in the town of "South Haven", and asked permission of S. J. Dunkley to write an article concerning the Dunkley Company factory.

That on or about the first day of October, 1903, affiant went to said canning factory and was referred to William Bruncker, who was instructed to conduct affiant through said factor; that affiant carefully observed and made copious notes upon the various processes and machines which were in use in said factory; that the fruit was received from the wagons on to the north porch where the same was graded and thence delivered into the factory and distributed in crates to women who were seated in chairs upon

platforms at either side of a table about 150 feet long, having in its center an endless moving belt; that the women peeled said peaches by hand or by small hand peeling machines which were attached to the table. As the peaches were peeled they were placed in pans which, after inspection by women inspectors, were dumped upon said conveyor belt and thus conveyed to a table having a moving slat platform where said peaches were filled into cans and thence delivered to the syruper. The peeling table, filling table and syruper were situated on the south side of the main room of the factory, and occupied practically the entire space from one end of the room to the other; that there was no lye peeling machine [67] in operation in the factory at that time, and affiant asserts that had there been such machine in operation when he visited the factory he certainly would have seen it, as he made a very careful investigation of all machines whether in operation or otherwise, and affiant is very positive that all of the peaches were being canned when he visited said factory were peeled by hand and not by the lye process; that after making said observations and notes, affiant wrote an article describing carefully, accurately and in detail all of the machines and processes which he saw at said factory; that said article was entitled "Canning Factory Is a Busy Place"; that in May, 1918, affiant read a copy of said article as it appeared in the issue of the "South Haven Daily Tribune" under date of October 1, 1903, and the reading of said article refreshed his memory as to the date of his visit and as to what he saw upon that occasion.

That affiant testified in the case of Dunkley Company et al. vs. Pasadena Canning Company et al., Equity C-8, tried before Judge Trippet in Los Angeles in May-July, 1918, and he refers to the official transcript of his testimony in that case and makes the same a part hereof as if fully set forth herein; that affiant is willing to give testimony as in that case and in accordance with this affidavit either in the above-entitled cause or in any other suit or proceeding involving the validity of letters patent 1,104,175.

(Signed) LYMAN L. CROSTHWAITE.

Subscribed and sworn to before me this 29th day of November, A. D. 1918.

[Notarial Seal]

(Signed) MINA CAMPBELL,  
Notary Public for and in the County of Cook, State  
of Illinois. [68]

(Attached hereto is exhibit.)

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [69]

State of Illinois,  
County of Cook,—ss.

L. L. Crosthwaite, being first duly sworn upon  
oath, deposes and says:

I am of lawful age, and a resident of Chicago, Cook County, Illinois.

During the years 1903 and 1904, I was connected with a newspaper known as "The Tribune-Messenger" at South Haven, Michigan, and in April, 1904, wrote an article which appeared in the "Tribune-Messenger" on April 19th, 1904, reprinted in the weekly edition under date of April 22nd, 1904, relating to the installation of two pitting machines and two peeling machines being installed at the Dunkley Canning factory under the supervision of Stewart Campbell, the superintendent. My best recollection and belief is that I secured the information upon which this article was based, from Samuel J. Dunkley.

I have examined the files of the weekly "Tribune-Messenger" for 1904 and there is no other reference to said machines in said paper, and no subsequent denial or modification of the facts as stated in the article of April 19th and 22nd, 1904.

I have also examined the issue of the "Tribune-Messenger" for June 17th, 1904, and the attached photograph shows a true copy of an article which appeared in the South Haven, Michigan, "Tribune-Messenger" under date of Friday, June 17th, 1904, referring to my connection with the paper for more than a year [70] prior to that date. The article appears at the top of the first column on page two, this page being folded back (but not detached), so as to show the heading of the paper and the date.

And further the affiant saith not.

(Signed) L. L. CROSTHWAITE.



Subscribed and sworn to before me, a notary public in and for Cook County, this 11th day of February, day of 1919.

(Signed) LOUISE E. SMITH,

[Seal]

Notary Public.

My commission expires Feb. 1, 1922.

(Attached hereto are exhibits.)

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [71]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY,      Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,              Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,

vs.

SUNLIT FRUIT COMPANY,      Defendant.

**Affidavit of Martin H. De Loof.**

State of Michigan,  
County of Van Buren,—ss.

Martin H. De Loof, being first duly sworn, [72] deposes and says that he was in the employ of Dunkley Company from August, 1898, until May, 1909, as timekeeper and bookkeeper; that until the year 1905 he acted as timekeeper and was in charge of the pay-rolls for said company, and subsequent to that time he acted as bookkeeper and was in charge of the books; that after the bankruptcy of said Dunkley Company of Illinois and the reorganization of the assets of said concern under the control of a new corporation then formed, to wit, Dunkley Company of Michigan, affiant became one of the directors of said last mentioned corporation, being associated with S. J. Dunkley, Melville Dunkley, Fred Llewellyn and others in said concern.

That during the canning seasons of 1901, 1902, 1903 and 1904, affiant was employed at the Dunkley Company factory at South Haven as timekeeper and in charge of the pay-rolls; that during the peach season of 1903, affiant lived at the South Haven factory in a room at the east end of the building, and that his office was in the basement of the north wing of the factory building and that in going to and from said room and office and in his capacity as timekeeper,

he went many times each day through the main fruit room where the peaches were peeled and canned; that affiant is positive that there was no lye peach peeling machine in operation in said factory during the peach season of 1903; that the first lye peach peeling machine which was used commercially in the Dunkley factory at South Haven was installed and used in 1904; that affiant fixes these dates by many circumstances, among which are the following:

That affiant was married early in 1905 and the previous [73] year was the last year during which he was employed at the South Haven factory, and the peach peeler was installed the last season affiant worked there; and also that the pay-rolls indicated a change in the method of peeling peaches in the season of 1904, in that the peeling of peaches by hand was paid for "by the piece", while after the lye peach peeler was installed, in 1904, there were few, if any, piece workers, the work of the women in inspecting and trimming the fruit being paid for by the hour; and that the entries upon the pay-rolls plainly indicate the different classes of work done by the employees; that the pay-rolls show that during the peach season of 1903 there was as large a percentage of piece workers, for instance, hand peelers, as in the previous season of 1902, or larger, while in the season of 1904 there were scarcely any piece workers; that affiant also recalls that during the peach season of 1904 the peeling of peaches by hand was confined to a small quantity of soft fruit which could not be peeled by the brush machine.

That in the spring of 1903 affiant went on the road

as salesman for Dunkley Company, selling canned peaches and other fruits; that it was then a matter of common knowledge among the trade that peaches were being peeled in California by the lye process; that affiant in selling canned peaches as a salesman for Dunkley Company as aforesaid made a practice of assuring prospective purchasers of said goods that Dunkley Company canned only high grade goods which were peeled by hand and did not use lye or poison in the preparation of its canned goods.

That affiant gave testimony in the case of Dunkley Company et al. vs. Pasadena Canning Company et al., Equity C-8, in the United States District Court, Southern District of California, Southern Division, and affiant refers [74] to the official transcript of said testimony and hereby makes the same a part hereof as if fully set forth herein; that affiant is willing to testify in accordance with this affidavit and the testimony given in said case, in any or all of the above-entitled causes, and in any other suit or proceeding in which the same or similar issues are involved.

That affiant has also testified by deposition in the case of Dunkley Company vs. California Packing Corporation. United States District Court for the Southern District of New York, Equity 15-98, and affiant refers to said deposition and exhibits thereto attached, and hereby makes the same a part hereof as if fully set forth herein.

(Signed) MARTIN H. DE LOOF.

Subscribed and sworn to before me this twelfth day of December, A. D. 1918.

[Notarial Seal]

(Signed) R. S. McGOWAN,  
Notary Public in and for County of Van Buren,  
State of Michigan.

My Commission expires Feb. 4th, 1922.

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [75]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.



IN EQUITY—No. 205.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY,      Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.                  Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant,

## IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY, a Corporation,  
Defendant.

**Affidavit of Charles De Pue.** [76]

State of Wyoming,  
County of,—ss.

Charles De Pue, being first duly sworn, deposes and says: That he is now in the employ of the Continental Oil Company at Casper, Wyoming; that affiant was employed by the Dunkley Company at its factory at South Haven, during the peach seasons of 1903 and 1904 in the making of syrups; that during the peach season of 1903, no peaches were peeled by lye in commercial quantities in the Dunkley Company factory at South Haven, and the 1904 peach season was the earliest date at which a lye peach peeling machine was installed for commercial use, and that only one such machine was installed or operated during the season of 1904.

That affiant gave testimony in the case of Dunkley Company et al. vs. Pasadena Canning Company et al., Equity C-8, in the United States District Court, Southern District of California, Southern Division, and affiant refers to the official transcript of said testimony and hereby makes the same a part hereof as if fully set forth herein; that affiant is willing to testify in accordance with this affidavit, in any or all of the above-entitled causes and in any other suit or proceed-

ing in which the same or similar issues are involved.

(Signed) CHAS. DE PUE.

Subscribed and sworn to before me this 29th day  
of November, A. D. 1918.

(Signed) A. E. THOMPSON,

Notary Public in and for said County of *Natrona*,  
State of Wyoming.

[Notary Seal]

Received copy of the within affidavit this 17th day  
of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [77]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiffs,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant,

IN EQUITY—No. 202.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY,      Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.                      Defendant.



mit to an operation, and she still has in her possession and is able to produce the receipted bills covering hospital and physicians' charges.

That during the peach season of 1903, affiant had no regular employment, but was assigned to various special work, and was favored on account of her illness, occasionally acting as inspectress or checker in charge of some of the women who were peeling peaches by hand at the long peeling table; that affiant's duties carried her to all parts of the main room in the factory, and that at no time during the season of 1903 were peaches peeled commercially by the lye process, or by any kind of lye machine; that some time in October, 1903, Miss Carrie Wing (now Mrs. Easterbrook) handed to affiant a pan of peaches which had been peeled by the lye process and instructed her to pit them, and that they were very smooth and slippery and not corrugated as in the case of peaches peeled by hand or by the hand peeling machines; and that affiant saw no other and no more lye peeled peaches than said one panful at the Dunkley factory at South Haven or elsewhere during said peach season of 1903. [79]

That during the peach season of 1904, affiant was employed as forelady in the Hartford factory of Dunkley Company, and the entire peach pack in that factory was peeled by hand and hand peeling machines; that a considerable quantity of soft peaches were sent to Hartford from South Haven during that season because the brush peeling machines tore and destroyed the soft fruit; that during said season of 1904 affiant visited the South Haven factory of Dunkley Company



and there saw them for the first time peeling peaches commercially by the lye process.

That affiant gave testimony in the case of Dunkley Company et al. vs. Pasadena Canning Company et al., Equity C-8, in the United States District Court, Southern District of California, Southern Division, and affiant refers to the official transcript of said testimony and hereby makes the same a part hereof as if fully set forth herein; that affiant is willing to testify in accordance with this affidavit and the testimony given in said case, in any or all of the above entitled causes, and in any other suit or proceeding in which the same or similar issues are involved.

(Signed) MRS. CHAS. De PUE.

Subscribed and sworn to before me this 30th day of November, A. D. 1918.

(Signed) FRANKIE M. KENNEDY,  
Notary Public in and for the County of Kalamazoo,  
State of Michigan.

[Notarial Seal]

My Commission Expires Oct. 25th, 1921.

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [80]

In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,

vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY, Plaintiff,

vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY, Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,                      Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY,                      Defendant.

**Affidavit of Clyde M. Funk.**

State of Michigan,  
County of Kalamazoo,—ss.

Clyde M. Funk, being duly sworn, deposes and says:

That he is now and for many years has been a resident of Kalamazoo, Michigan. For above six years he has been bookkeeper for the Clark Engine & Boiler Company there, and has in his custody all the books and records of the company. He has made

various searches among the old books and papers of the company for entries showing dealings between the Clark Engine & Boiler Company and the Dunkley Company in the years 1903-4. Sometimes these searches [81] were made at the instance of the Dunkley Company, and sometimes at the instance of the Pasadena Canning Company. Ledger E of the Clark Engine & Boiler Company was found in the vaults of the Company. Exhibit "A" is a true photograph of page 331 of this ledger, and Exhibit "B" is a true photograph of page 432 of this ledger. Exhibit "C" is a true photograph of an original order sheet of the Clark Engine & Boiler Company which he found among the papers and records of the company. Exhibit "D" is a true photograph of page 695 of letterpress invoice book No. 7 of the Clark Engine & Boiler Company, which book he found among the papers and records of the Company.

Subsequent to the date at which this affiant testified by deposition, as hereinafter referred to, he delivered to an agent of the Pasadena Canning Co., for use in the trial of the case of Dunkley Co. vs. Pasadena Canning Co., hereinafter referred to, three bound letterpress invoice books Nos. 7, 8 and 9 of the Clark Engine & Boiler Company covering the period from September, 1902 to September, 1904, together with five volumes of order sheets of said company covering the years 1903-4. The order sheets were of the same general character as Exhibit "C", and the invoice books Vols 8 and 9 were of the same general character as invoice book Vol. 7, of page 695 of which Exhibit "D" is a photograph.

Affiant was a witness in the case of Dunkley Co. et al. vs. Pasadena Canning Co. et al., in the United States District Court for the Southern District of California, Southern Division, Equity C-8, and testified therein, giving his testimony by deposition taken at Kalamazoo, Michigan, and affiant hereby refers to his said testimony of record in that case and hereby makes his said testimony, as therein set forth, a part of this affidavit as if fully set forth herein. Affiant will testify in the above entitled causes or any of them, or in any other suit or proceeding involving the validity of letters patent 1104175 as to the facts set [82] forth in this affidavit.

(Signed) C. M. FUNK.

Subscribed and sworn to before me this 10th day of February, 1919.

[Seal] (Signed) URAL S. ACKER,  
Notary Public in and for the County of Kalamazoo,  
State of Michigan.

(Attached hereto are exhibits "A", "B", "C", and "D".)

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [83]

In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,

vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY, Plaintiff,

vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY, Defendant.



IN EQUITY—No. 209.

DUNKLEY COMPANY, Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY, Plaintiff,  
vs.

J. F. PYLE & SON, INC., Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY, Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY, Plaintiff,  
vs.

SUNLIT FRUIT COMPANY, a Corporation,  
Defendant.

**Affidavit of William A. Geiger.** [84]

State of Illinois,  
County of Cook,—ss.

William A. Geiger, being duly sworn, deposes and says: That he is and for many years last past has been a resident of the City of Chicago, State of Illinois; that he is now associated with the firm of W. H. Miner, dealer in railway supplies with offices in the Rookery Building, Chicago.

That during the year 1904 and prior thereto, affiant was in the employ of Munday, Evarts and Adcock, Patent Attorneys, with offices in Chicago, Illinois, said affiant being employed in the capacity of mechanical draftsman and as such, it was the duty of affiant to make drawings to be used for filing in the patent office in connection with application for patents prosecuted by his said employers.

That affiant made the drawings which accompanied the application of S. J. Dunkley, Serial No. 234715 resulting in Patent No. 1104175; that said drawings prepared by affiant or exact copies thereof, were reproduced and now appear in said Letters Patent.

That affiant is the same William A. Geiger whose signature appears on said drawings as one of the witnesses thereto.

That on or about the 26th day of September, 1904, Edmund Adcock, Esq., a member of the firm of affiant's said employers, in company with others (among them being Edwin Norton and John Hodgson), made a visit to the factory of the Dunkley [85] Company at South Haven, Michigan, for the purpose of seeing in commercial operation a lye peach peeling apparatus and other machines, and that upon the return of said Adcock to his office upon the day following said visit, or soon thereafter, said Adcock instructed affiant to go to said Dunkley factory at South Haven and to make drawings of said lye peach peeling machine for the purpose of an application for patent thereon, as well as to make drawings of certain pitting and cooker machines for similar purposes.

That pursuant to said instruction, affiant on or about

Sunday, the second day of October, 1904, arrived at said Dunkley Company cannery at South Haven and proceeded to make sketches of said lye peach peeling machine, to be later used as a basis for the formal patent drawings. The making of said sketches and the recording of measurements and data for the purposes of said drawings consumed approximately three (3) days of affiant's time, to wit, October 2d, 3d and 4th (Sunday, Monday and Tuesday) and during the whole of one of these days, said lye peach peeling machine was in full operation.

That in the making of said sketches and that in obtaining said data it was necessary for affiant to and affiant did examine said lye peach peeling machine very carefully.

That said machine consisted of

(1) An iron tank about 40" wide and 12 or 14 feet long, provided with a conveyor made of galvanized iron flights [86] mounted on chains, said tank containing a heated lye solution through which the peaches were carried by means of the conveyor for the purpose of disintegrating their skins, the peaches being held down in the solution by a wire screen; and

(2) A brushing apparatus for the removal of the previously disintegrated skin from the fruit, comprising six (6) cylindrical roller brushes arranged in pairs, with a carrier belt disposed longitudinally between and slightly below each of said pair of brushes and also perforated water pipes arranged one above and parallel to each carrier belt and one on either side of each carrier belt and parallel thereto and beneath said cylindrical brushes; and that in operation

peaches were conveyed through said tank of lye and discharged into said brushing apparatus and conveyed through and between the cylindrical brushes and were turned, operated on and cleaned by the action of the rotating cylindrical brushes and by water delivered from said perforated pipes.

That said machine was substantially as represented in the drawings accompanying Letters Patent #1,104,175, issued July 21, 1914 and the drawings shown in the application of S. J. Dunkley for patent on the machine for peeling peaches and other fruit, Serial No. 234715 filed November 29, 1904.

That during the progress of the making of said sketches, affiant noted carefully the disposition of machinery in said factory and the peach peeling and other operations therein.

That affiant now refers to a sketch entitled [87] "Second floor, Dunkley Factory, 1904", said sketch having at the lower right hand corner the following: (L. A. Exhibit 6—for identification) and the same is marked "Exhibit I" and is hereby made a part hereof.

That the said "Exhibit I" fairly represents the location of machines as designated thereon, the location of the lye peach peeling machine referred to being designated on said Exhibit I hereof as "Stewart-Campbell-Lye Machine".

That said second floor was the main operating floor of the factory and the only part thereof where peaches were peeled and canned in commercial quantities.

That the lye peach peeling machine from which affiant made said drawings was the only lye peach peeling machine installed or in either commercial or experi-

mental operation in the said Dunkley Company South Haven factory on its main floor, during the time affiant was engaged in making drawings of said and other machines at their factory, to wit, October 2d, October 3d, and October 4th of the year 1904.

That there was no other lye peach peeling machine and no other lye tank and no other roller brush machine, located on said second floor or main floor of said Dunkley factory during that time.

That had there been another lye peach peeling machine in operation or another lye peach peeling machine or another lye tank or roller brush machine located in the same room affiant would have seen the same, not only because of the nature of affiant's vocation, but also because his employer, Mr. Adcock, had particularly informed affiant concerning said lye peach [88] peeling machine consisting of a lye tank attached to a roller brush machine, and affiant was therefore especially interested in said device, and in each part thereof, and also for the further reason that the room in which said lye peach peeling machine was situated was very narrow, to wit, not exceeding thirty-two (32) feet in width, and the space therein available for the use, installation or storage of another like machine was exceedingly limited.

That said lye peach peeling machine and all parts thereof had the appearance of being new, that is to say, had apparently been in commercial use but a short time prior to October 2d, 1904.

That at no time during affiant's stay in said factory did any person say to affiant or claim to him that said or any lye peach peeling machine or lye tank or roller

brush machine had been used commercially in said Dunkley Company's factory prior to the peach season of 1904; that, on the contrary, said machine was referred to in substance as a new invention, and that affiant noticed some experimentation and adjustment being done upon said machine by those in charge of it of a nature usually incident to the installation of machines not previously commercially used; that affiant has seen the photograph on page 1122 of Plaintiff's Exhibit "A" in the case of Dunkley Company et al. vs. Pasadena Canning Company et al., Equity C-8 in the United States District Court in and for the Southern District of California, Southern Division, the said photograph being entitled, "Dunkley's Exhibit No. 1, Photograph of Frame of First Dunkley Machine", a copy of which is hereto attached and made a part hereof and [89] marked "Exhibit II"), and that no such machine was located in the same room as the machine referred to by affiant herein during the time affiant was at said factory; that affiant has seen pages 1123, 1124 and 1125 of said Plaintiff's Exhibit "A" in the said Dunkley Company, et al. vs. the Pasadena Canning Company containing therein certain photographs entitled respectively, "Dunkley's Exhibit No. 2, photograph 1 of Second Machine", "Dunkley's Exhibit No. 2, photograph 2 of Second Machine", "Dunkley's Exhibit No. 2, photograph 3 of Second Machine", copies of which said photographs are hereto attached and made a part of this affidavit and respectively marked and designated as Exhibits III, IV and V hereof; that said photographs are true and correct photographs of part of the brush-



ing portion of the machine which was operated on the third, and fourth days of October, 1904, in the Dunkley South Haven factory, and from which affiant made the sketches for the patent drawings as hereinbefore set forth; that affiant is enabled to fix the time at which he made said sketches at the Dunkley factory by memoranda contained in a memorandum book and also by entries in an account book, said entries and memoranda having been made and written by himself at the time herein referred to and covering the items of his expenditures and his employment in connection with the making of the said sketches at the South Haven factory.

That in the above-entitled causes or any of them or in other suit or proceeding involving the validity of said [90] Patent No. 1,104,175, affiant is willing to testify as a witness to all of the facts herein set forth.

(Signed) WILLIAM A. GEIGER.

Subscribed and sworn to before me this 3d day of December, A. D. 1918.

(Signed) MINA CAMPBELL,

[Notarial Seal]

Notary Public in and for the County of Cook, State of Illinois.

(Attached hereto are exhibits 1, 2, 3, 4 and 5.)

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [91]

In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,

vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY, Plaintiff,

vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY, Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,                  Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY, a Corporation,  
Defendant.

**Affidavit of G. E. Grier.**

State of California,  
County of Los Angeles,—ss.

G. E. Grier, being first duly sworn, deposes and says: That he is the G. E. Grier who is one of the defendants in the suit entitled Dunkley Company and Michigan Canning & Machinery Company, Plaintiffs, vs. Pasadena Canning Company and G. E. Grier,

Defendants, No. Equity C-8, in the United States District Court, [92] Southern District of California, and in which a decree has been rendered in favor of the defendants therein, and against plaintiffs, adjudging and decreeing the patent sued on herein, to wit, Patent No. 1,104,175, to be null and void.

That affiant gave testimony in the trial of the above-entitled causes and in said case of Dunkley et al. vs. Pasadena Canning Company, et al., and affiant refers to the transcript of said testimony and hereby makes same a part hereof as if fully set forth herein; and affiant is willing to testify in like manner, and in accordance with this affidavit, in any proceeding in the above-entitled causes, or in any action or proceeding in which the validity of Letters Patent No. 1,104,175 is or may be involved.

That in April, 1903, affiant commenced the building of two commercial lye peach peeling machines identical in construction, and completed the same some time in July, 1903; that photographs of one of said machines appear in the transcript of evidence taken in the above-entitled causes and are designated therein as Defendants' Exhibits "B" 1 to 8, the original of one of said machines being introduced therein as Defendants' Exhibit "K" and introduced in said Pasadena Canning Company case as Defendants' Exhibit 9.

That one of said machines was delivered to East Side Canning Company, Los Angeles, E. A. Taylor, proprietor, on or before July 30, 1903, and the other of said machines was, on or before that time, put in commercial operation in the plant of Pasadena Canning Company at Pasadena, California, in the com-

mercial peeling of peaches in connection with the lye process, and thereafter so used continuously during the entire peach season of 1903 and that from and after the installation of said machine by Pasadena Canning Company, *all* of the peaches packed by Pasadena Canning Company were so peeled by means of said apparatus with the exception of a very insignificant quantity. [93]

That the reason why affiant did not apply for a patent upon said device was that he did not consider the device patentable, for the reason that the peeling of peaches by lye was old, and affiant's device consisted merely of a "grasshopper" scalding (an already patented apparatus) and a spray washer, which was a device in universal use for washing purposes.

That prior to the issuance of Dunkley's patent 1,104,175, to wit, as early as the year 1907, affiant realized that any machine utilizing water sprays under heavy pressure for the removal of previously disintegrated peeling from peaches was defective and objectionable for the reason that the effect of the operation of such sprays upon ripe or soft fruit is to tear, injure and otherwise destroy the fruit and to waste a considerable portion of it, and that as early as the year 1909 affiant by experiment discovered that the disintegrated peeling could be removed by means other than the spray, and on or about said time he conceived the principle of the machine which he subsequently patented under Letters Patent 1,168,799; that by reason of the gentle handling of the fruit in affiant's said new machine, now known as the "Pasadena Washer", a considerable saving in fruit is effected, to wit, thirty

to three hundred pounds per ton, a sufficient quantity for twenty four to two hundred forty cans on the average for each ton processed; that the quantity saved varies with the condition of the fruit; that if the fruit is very ripe and soft, fruit can be successfully handled through said new machine which would be totally destroyed by the spray device; that the foregoing facts can easily be demonstrated by running through both types of machines a quantity of ordinary soft canned peaches.

That in the use of the term "relative flow" in affiant's application for patent on his last mentioned machine, affiant did not intend to indicate a jet action or anything more or [94] other than what actually occurs in the operation of said machine when the buckets are being revolved at from ten to twelve revolutions a minute; that in the actual operation of said machine that halved peaches do not immediately sink to the bottom of the tank upon being deposited therein but a considerable portion of them remain more or less suspended until engaged by the next approaching bucket and that as soon as sufficient peaches are gathered into the bucket to cover the perforations in the lower part thereof there is a tendency to push or lift the water in the compartment ahead of the revolving bucket, some of the water being dumped with the peaches into the next adjoining compartment and some escaping from above the peaches out, over or through the sides of the buckets; that the proportionate amount or volume of water which escapes through the interstices between the peaches and through the perforations in the bottom of the bucket is slight as compared



with the water otherwise disposed of as just related; that by reason of the said lifting of the water by the buckets above and ahead of the fruit within them no jet or spray action is possible in affiant's machine; that by no possible method of operation of said machine can a spray or jet of water be directed against the peaches in such a manner as to peel the peaches; that the position of the intakes on said machine is merely a matter of convenience to affiant and not for any purpose of utilizing the intake as a jet for removing the peeling from peaches and this is demonstrated by the fact that there are other machines of exactly the same type in successful operation in various places in California having intakes so positioned that it would be impossible for the water to strike the fruit regardless of the method of operation of the machine, to wit: Sunset Canning Company has in successful operation at its factory at Pomona, California, two machines for peeling peaches, said machines having no jets or sprays; that in each of said [95] machines the intake is situated in the corner of the tank, the water being so directed that it is impossible for the water to strike the revolving buckets or the fruit; that in the factory of the Pomona Valley Canning Company at Pomona said company has in successful operation for peeling peaches a "Pasadena Washer" which operates without jets or sprays and which has its water intake in the bottom of the tank and under water eight or ten inches deep, and so positioned that no jet action upon the fruit is possible; that affiant annexes hereto photographs of these and other machines made under his patent all of which peel peaches perfectly and all of

which have intakes so positioned that the water upon entering the tanks cannot strike the fruit, and hereby makes said photographs a part hereof.

That in the operation of said "Pasadena Washer" type of machine there are no jets or sprays of water directed upon the fruit nor is there any jet action or equivalent of jet action of water upon the fruit; that in affiant's opinion the removal of the distintegrated peeling and the cleaning of said fruit is accomplished by a combination of three actions or effects, to wit: First, the action of water as a solvent which is demonstrated by the fact that if a peach with the disintegrated peeling unremoved is placed in a still body of water and allowed to remain there, the solvent action of the water will eventually remove practically all, if not all, of the peeling and leave the fruit clean. Second, the action of the water upon the fruit occasioned by the dropping of the fruit into the water as shown from the fact that if the fruit is properly lyed the peeling will be entirely removed by dropping it about six times into the water from a height of two feet. Third, the gentle laving effect occasioned by the movement of the peaches through the water by means of the revolving buckets, the function of the buckets also being to subject the fruit to the solvent action of new and constantly [96] fresher water and to accomplish the repeated dropping of the fruit into the water in successive compartments.

That affiant also annexes hereto and by this reference makes a part hereof, photographs of the "Schaefer Machine", a patented apparatus for the removal of previously distintegrated peelings from peaches (Pat-

ent No. 1,205,110) a machine on which (as can be seen from said photographs) the water intakes are outside of the perforated conveyor cylinder, and the water is so directed downward as not to strike said cylinder nor the peaches which are conveyed within said cylinder. That many lye peach peeling machines of the Schaefer type are used in California, and same peel peaches successfully without the use of any sprays or jets of water directed upon the fruit whatever.

That affiant has had a long and extensive experience in the peeling of peaches by lye, and in handling solutions of lye for this purpose. That it is the opinion of affiant that an apparatus employing lye for the treatment of peaches, in peeling them commercially, could not be used in a factory room thirty-five feet wide without the knowledge of all persons in said factory room within a radius of one hundred feet, for the reason that in the treatment of peaches by lye a very pungent odor is emitted, and the fumes of the boiling lye permeate the atmosphere for a considerable distance, a fact which can be easily demonstrated by experiment.

That on or about October 1, 1918, at affiant's factory at Pasadena, California, and in the presence of Harry M. Miller, George Coffin, James H. Gilmore, J. A. Wardlaw, E. H. Kennedy, and Kemper B. Campbell, affiant peeled peaches with the original McDermett Lye Peach Peeling Machine, a machine invented by Ida L. and W. R. McDermett, and introduced in the said case of Dunkley and Company et al. vs. Pasadena Canning Company et al., as defendant's Exhibit

43. That in peeling [97] said peaches, good, firm fruit was selected, and about ten pounds, after having been subjected to the lye treatment, and the peeling thereby disintegrated, were placed in the cylinder and revolved in one of the compartments of the tank of said machine, which was partially filled with clear water, thirteen revolutions in sixteen seconds, thereupon the cylinder was removed into the second compartment of clear water, and revolved eight revolutions in ten seconds; thereupon the cylinder was opened and the peaches removed. The peaches were perfectly peeled. Two other similar experiments were made and with the same result. Affiant annexes hereto and makes a part hereof photographs showing the results of said experiments with said McDermett machine, and the fruit which was peeled in said experiments. That, like the spray machine, said machine as constructed is not perfectly adaptable to the peeling of very soft fruit, but for firm fruit the machine is suitable and peels the fruit successfully. The inside of the cylinder marks the fruit slightly, but not more than is done in knife peeling, and these marks practically disappear when the fruit is cooked, and the same is a marketable product.

That affiant has seen and is familiar with the so-called Pyle lye peach peeling machine which was introduced in evidence in said Pasadena Canning Company case as defendants' Exhibit 72, said machine now being in custody of affiant, under the order of the Court; that affiant has examined and is familiar with the shaker portion of said machine known as the Anderson Shaker and Grader; that in affiant's opinion said

shaker or oscillating table would operate as a means of turning the fruit over and advancing it; that affiant has in his factory a shaking table which operates with the same oscillating motion and which is designed for and performs perfectly the function of turning halved peaches over for the purpose of feeding them uniformly into a slicing device; that such tables are of standard construction and sold commercially for that [98] purpose, the machines being manufactured by Anderson-Barngrover Manufacturing Company of San Jose; that whole peaches could also be perfectly peeled by the so-called Pyle lye peach peeling machine.

That in the use of lye for peeling peaches the disintegrated peeling either floats to the surface or is held in suspension in the water, the saturated lye solution having a tendency to occupy the lower portion of the tank. That a circular pocket in the bottom of a lye tank such as the Dunkley patent drawings disclose would not be indicated or shown desirable by experiment or in practice, for the collection of disintegrated peeling, for the reason that such peeling would not be deposited therein, a fact which can easily be demonstrated by observing a lye machine of that type in operation.

That on or about the 28th day of November, 1917, affiant received from W. R. Roach a letter, of which the following is a copy:



"NATIONAL CANNERS ASSOCIATION.

Office of Secretary,

1739 H St., N. W., Washington, D. C.

November 22, 1917.

Mr. G. E. Grier,  
Pasadena Canning Co.,  
Pasadena, Cal.

My dear Mr. Grier:

I noticed by publication in the trade papers that Mr. Dunkley has again cleaned up on the peach packers in California covering his alleged patent lye peeling machine. To my mind this is an outrage, for he actually stole the process.

Years ago Mr. Dunkley was a painter. On one occasion he painted a house in Kalamazoo for a friend of mine, Mr. A. S. White, who formerly lived at Hart and whose earlier home was in Northern New York near the same locality where I was born and raised.

Mr. White told me on one occasion that Mr. Dunkley painted his house very well for him and he became more or less interested in him. A few years after that he met Mr. Dunkley and Mr. Dunkley told him he had gone into the canned goods business—had been packing some very fine peaches, had been to New York and secured some fine orders, that his customers wondered why he had not come around before with his products and that they [99] were very much taken with them. Mr. White told me he said to him at that time that he should use the lye process—that Mr. Chas. Seager, who at that time owned the small canning factory at Hart, had been



using very successfully. Mr. Seager was my predecessor in business. My partner, Mr. R. P. Scott, of the Chisholm-Scott Company, bought out Mr. Seager's packing interests in the fall of 1901 and we operated the Hart plant in 1902 on peas, corn, lima beans, and peaches, and at that time we used the lye method quite considerably.

Our method was to pit the peaches in the usual way, put them in a receptacle and dip them into the boiling lye solution, either spraying them off with a hose or otherwise. One method we used was to spray them on a moving belt with a spray from the hose. Another method was to spray them on a continuous revolving squirrel cage, the peaches passing through the squirrel cage automatically, being gravically inclined, the spray coming from overhead from a perforated pipe.

I don't think Mr. Dunkley has any right whatever to the method. *Mr.* predecessor, Mr. C. R. Seager, used the method for many years at Hart, Michigan. Several gentlemen that worked for me during the early stages of our business can substantiate what I have said. I could get them to give their testimony in Hart any time. I shall be glad to hear from you on the subject. Write me at Hart, Michigan.

With kindest personal regards, I am

Very truly yours,

(Signed) W. R. ROACH."

That said letter was, on or about January 1st, 1918, delivered to Kemper B. Campbell, now one of the attorneys in the above-entitled causes. That said Kemper B. Campbell on a trip made to Michigan

during the months of February and March, 1918, for the purpose of investigating the evidence relative to the subject-matter involved in the cause of Dunkley Company et al. vs. Pasadena Canning Company et al. investigated the facts set forth in said letter. That as a result of said investigation witnesses were produced at the trial of said cause of Dunkley Company et al. vs. Pasadena Canning Company et al. who were familiar with the use by W. R. Roach of a revolving squirrel cage machine for the purpose of peeling peaches and evidence of such use was presented in said cause.

(Signed) G. E. GRIER.

Subscribed and sworn to before me this 16th day of February, 1919.

[Seal]

C. L. BAGLEY,

Notary Public in and for the County of Los Angeles,  
State of California. [100]

Exhibits "A", "B", "C", "D", and "E" attached.  
Pasadena Washer, Exhibit "A";  
Schaefer Machine at Bonner Fruit Co., Exhibit "B";  
Three Schaefer machines at San Antonio Growers'  
Assn., Exhibit "C";  
Pasadena Washer at Pomona Valley Canning Co.,  
Exhibit "D";  
Two Pasadena Washers at Sunset Canning Co., Ex-  
hibit "E".

Received copy of the within affidavit this 18th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 18, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [101]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,

vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY, Plaintiff,

vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY, Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,              Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY, a Corporation,  
Defendant.

**Affidavit of George Harold.**      [102]

State of Michigan,  
County of Van Buren,—ss.

George Harold, being first duly sworn, deposes and says: That he was first employed at the Dunkley factory in South Haven in the year 1904, and did various kinds of mechanical work; that in the month of June or July, 1904, affiant installed water pipes

to supply a new lye peeling machine; that the photographs hereto attached and which are marked Exhibits "A", "B", and "C" are true and correct photographs of the brush part of said machine which was set up for the first time and operated on peaches in the summer of 1904; that there was but one peach-peeling machine installed in operation at the Dunkley factory at South Haven during the season of 1904; that the two line cast-iron frame machines were installed in 1905.

That affiant gave testimony in the case of Dunkley Company et al. vs. Pasadena Canning Company et al., Equity C-8, in the United States District Court, Southern District of California, Southern Division, and affiant refers to the official transcript of said testimony and hereby makes the same a part hereof as if fully set forth herein; that affiant is willing to testify in accordance with this affidavit, in any or all of the above-entitled causes and in any other suit or proceeding in which the same or similar issues are involved.

(Signed) GEO. HAROLD.

Subscribed and sworn to before me this 30th day of November, A. D. 1918.

[Notarial Seal]

(Signed) ROY S. McCRIMMON,  
Notary Public in and for said County of Van Buren,  
State of Mich.

My commission expires Sept. 22, 1919. [103]

(Attached hereto are exhibits "A", "B" and "C".)

Received copy of the within affidavit this 17th day  
of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [104]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,

vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.



IN EQUITY—No. 206.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY,      Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,              Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY,      Defendant.

**Affidavit of Mrs. George Harold.**

State of Michigan,

County of Van Buren,—ss.

Mrs. George Harold, being first duly sworn, [105] deposes and says that she has lived in South Haven since 1903; that she worked for Dunkley Company, at South Haven, from 1901 to 1905, inclusive; that in 1903 she worked at the long hand peeling table, peeling peaches by hand; that during said peach season of 1903 all peaches canned at the Dunkley South Haven factory were peeled by hand or by the little rotary hand machines; that she pitted no lye peeled peaches and saw none pitted by any one else during said season of 1903; that there was no lye peach peeling machine operated commercially in said factory during the season of 1903.

That in the season of 1904 affiant was employed as inspectress at one of the inspection tables upon which the fruit was discharged after coming from the lye peeling machine, which was for the first time installed immediately prior to the peach season of 1904; that practically all of the peaches packed during the season of 1904 were peeled by this first commercial lye peeling machine, which was newly built and newly installed that year and was the only peach peeling machine operated during that season.

That affiant gave testimony in the case of Dunkley Company et al. vs. Pasadena Canning Company et al., Equity C-8, in the United States District Court, Southern District of California, Southern Division,

and affiant refers to the official transcript of said testimony and hereby makes the same a part hereof as if fully set forth herein; that affiant is willing to testify in accordance with this affidavit and the testimony given in said case, in any or all [106] of the above-entitled causes, and in any other suit or proceeding in which the same or similar issues are involved.

(Signed) MRS. GEORGE HAROLD.

Subscribed and sworn to before me this 30th day of November, A. D. 1918.

[Notarial Seal]

(Signed) ROY S. McCRIMMON,  
Notary Public in and for County of Van Buren,  
State of Michigan.

My commission expires Sept. 22, 1919.

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [107]

In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,

vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY, Plaintiff,

vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY, Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,              Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY, a Cor-  
Defendant. [108]

**Affidavit of John Hetherington.**

State of Michigan,  
County of Wayne,—ss.

John Hetherington, being first duly sworn, deposes and says: That he lives at 14 Highland Avenue, Highland Park, Detroit, Michigan, and has been a resident of the State of Michigan for many years; that he is employed by the Cadillac Company as an

expert machinist; that he worked for Dunkley Company from about the last of August, 1904, until the month of November, 1905; that he installed the Dunkley pitting machines in the Dunkley Company factory at South Haven and had charge of them during the 1904 peach season, and also did repair work on the first commercial lye peach peeling machine which was installed in the year 1904; the only one lye peach peeling machine was located on the main floor of the factory during the season of 1904, and only one lye peeling machine was operated commercially during the 1904 peach season; that said machine was new and had never been used prior to the peach season of 1904; that said machine consisted of a lye tank attached to a three-line roller brush machine, and there was no other lye tank and no other roller brush machine on said main floor of the Dunkley factory during said year 1904; that affiant has seen photographs as represented on pages 1123, 1124 and 1125 of Plaintiff's Exhibit "A" in said case of Dunkley Company et al. vs. Pasadena Canning Company et al., entitled "Dunkley's Exhibit No. 2, Photograph 1 of Second Machine", "Dunkley's Exhibit No. 2, Photograph 2 of Second Machine" and Dunkley's Exhibit No. 2, Photograph 3 of Second Machine respectively, copies of which said photographs are hereto annexed and marked respectively Exhibits "A", "B" and "C" hereof.

And affiant has also seen pages 476, 477 and 478 of a copy of Patent Appeal Docket 790 (Interference No. 30,610), said pages containing photographs entitled respectively [109] "Dunkley's Exhibit No. 2, Photograph 1 of Second Machine", "Dunkley's Ex-



hibit No. 2, Photograph 2 of Second Machine" and "Dunkley's Exhibit No. 2, Photograph 3 of Second Machine"; that said photographs represent the brush part of said machine only and do not include the lye tank; that the sketch of floor plan entitled "Second Floor Dunkley Factory 1904" (L. A. Exhibit 6—for indentification) attached hereto and marked "Exhibit D" hereof is a fair representation of the dimensions of said factory and of the location of machinery in the main factory room during the peach season of 1904; that said brush machine had a frame made of wood; that in the spring of 1905 additional brush machines were made having iron frames, and affiant did a great deal of the work in assembling, setting up, fitting and adjusting these machines; that affiant fixes the date of his employment at South Haven by written documents, among them being the date upon a Masonic emblem given to affiant upon his induction into South Haven Lodge, A. F. & A. M.

That affiant was a witness in said case of Dunkley Company et al. vs. Pasadena Canning Company et al., and testified therein; and affiant hereby refers to the transcript of his testimony of record in that case, and hereby makes said transcript, a part of this affidavit as if fully set forth herein; that affiant will testify in the above-entitled causes, or any of them, or in any other suit or proceeding involving the validity of letters patent 1,104,175 to the facts as set forth in this affidavit.

(Signed) JOHN HETHERINGTON.

Subscribed and sworn to before me this 29th day of November, A. D. 1918.

[Notarial Seal] (Signed) J. H. GOLDIE,  
Notary Public in and for the County of Wayne,  
State of Michigan.

My commission expires March 6, 1921. [110]  
(Attached hereto are exhibits "A", "B", "C" and  
"D".)

Received copy of the within affidavit this 17th  
day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [111]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY,      Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,                  Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY,      Defendant.

**Supplemental Affidavit of John Hetherington.**

State of Michigan,  
County of Wayne,—ss.

John Hetherington, being first duly sworn, deposes and says: That he is the same John Hetherington who made affidavit in the above-entitled causes on the 29th day of November, 1918, before one J. H. Goldie, a notary public in and for the county of Wayne, State of Michigan, and this affidavit is made by affiant supplementary thereto and explanatory thereof.

That the photographs, copies of which are annexed to affiant's said affidavit of November 29th, 1918, and marked Exhibits "A", [112] "B", and "C", thereof, are true and correct photographs of the brush part of the peach peeling machine which was installed in 1904 in the Dunkley factory at South Haven, prior to the peach season of that year, and which was first used for the peeling of peaches during said peach season.

(Signed) JOHN HETHERINGTON.

Subscribed and sworn to before me this 7th day of February, 1919.

[Seal] (Signed) EUGENE B. THIBAUT,  
Notary Public in and for the County of Wayne,  
State of Michigan.

My commission expires May 5, 1920.

(Attached hereto are photographic exhibits "A",  
"B", and "C".)

Received copy of the within affidavit this 17th day  
of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [113]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,

vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY, Plaintiff,

vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY, Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY, Plaintiff,

vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY, Plaintiff,

vs.

J. F. PYLE & SON, INC., Defendant.



IN EQUITY—No. 211.

DUNKLEY COMPANY, Plaintiff,

vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY, Plaintiff,

vs.

SUNLIT FRUIT COMPANY, Defendant.

**Affidavit of William A. Hinderliter.**

State of California,  
County of Los Angeles,—ss.

William A. Hinderliter, being first duly sworn, deposes and says: That he resides in the City of Los Angeles, State of California, at 228 South Grand Avenue; that he resided in the city of South Haven, Michigan, from 1900 to 1913; that he was [114] employed in the cannery of the Dunkley Company at South Haven part of the season of 1901 and during the season of 1902, and during the years 1903 and 1904 was frequently in said cannery, his wife being employed there during the seasons of 1903 and 1904; that in the year 1902 affiant worked all over the cannery building at various times, but his main work was in back of the large cooker, where the cans came out after they were cooked, his duties being to test the cans. That during said year of 1902 there was no machine used to peel peaches at said cannery, nor was there any experimental or model machine constructed at said cannery.

That in the year 1903 all peaches peeled at said cannery were peeled by hand or with small hand machines; that in the peach season of 1903 a small machine was constructed by Stewart Campbell, which machine was for the purpose of peeling peaches; that this model machine, as affiant recalls, was down near the engine-room where Fred Brown, the engineer, worked; that in the peach season of 1904 a larger machine was used to peel peaches at said cannery, this larger machine being constructed with three runways for the peaches, with three pairs of brushes.

That affiant did not work for the Dunkleys at their said cannery after the year 1902 but was employed as a night watchman in South Haven and during the daytime frequently visited said cannery, as aforesaid.

That affiant is ready and willing to testify to the foregoing facts in the above-entitled causes or in any of them, or in any other cause in which the same or similar issues may be involved.

WILLIAM A. HINTERLITER.

Subscribed and sworn to before me this 23d day of February, 1919.

[Seal]

O. L. BAGLEY,

Notary Public in and for the County of Los Angeles,  
State of California.

[Endorsed]: Filed Feb. 24, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [115]

In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,

vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY, Plaintiff,

vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY, Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,              Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY, a Corporation,  
Defendant.

**Affidavit of Mary Z. Hinderliter.**

State of California,  
County of Los Angeles,—ss.

Mary Z. Hinderliter, being first duly sworn, deposes and says: That she is the wife of Mr. William A. Hinderliter, and resides at 228 South Grand Avenue, Los Angeles, California; that she resided in the City of South Haven, Michigan, from 1900 to 1913; that she was employed by the Dunkley Com-

pany at their cannery in South Haven in the years 1903 and 1904; that in the year [116] 1903 at said factory a long table was made for the women to sit at while peeling peaches by hand. This table was about one hundred fifty feet long and was used during the peach season of 1903.

That affiant worked at said factory in 1903 at the filling table which was also put in new that year and was a table with slat conveyor top about sixty feet in length. Photographs of said "peeling table" and of said "filling table" are annexed hereto, marked, respectively, Exhibits "A" and "B" and are hereby made a part hereof. That a machine was not used to peel peaches in said factory in the year 1903 and no peaches were peeled by means of a lye peeling process during the year 1903 for the market, but, on the contrary, all peaches were peeled by hand or with small hand machines; that had a machine been used to peel peaches commercially in said factory during 1903 affiant would have observed it, as she was in a position to do so.

That during the summer of 1904 affiant worked at said factory and during the said summer half of said long table was cut away and removed and a machine installed to peel peaches; that affiant worked at said factory during the fall of 1904 and during said fall in the peach season said machine so installed was used to peel peaches; that said machine had three runways for peaches and was equipped with brushes, three pairs of brushes, as affiant recalls.

That only one machine was used during the season of 1904 to peel peaches at said cannery; that affiant

fixes the year 1904 as the year in which said machine was used to peel peaches at said cannery from the fact that said machine was used during the last season that affiant worked there, and the season of 1904 was the last season that affiant worked at said cannery, and from the fact that 1903 was the first year affiant worked at said factory and all peaches were peeled by hand at said factory during that year. [117]

That affiant's husband, William A. Hinderliter, worked at said cannery part of the season of 1901 and in the season of 1902.

That affiant is willing to testify to the foregoing facts in the above-entitled causes or any of them, or in any other cause in which the same or similar issues may be involved.

MARY Z. HINTERLITER.

Subscribed and sworn to before me this 23d day of February, 1919.

[Seal]

C. L. BAGLEY,

Notary Public in and for the County of Los Angeles,  
State of California.

Attached hereto are exhibits "A" and "B".

[Endorsed]: Filed Feb. 24, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [118]



In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,  
vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,  
vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY, Plaintiff,  
vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY, Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,                      Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY, a Corporation,  
Defendant.

**Affidavit of John Hodgson.**

[119]

State of Illinois,  
County of Cook,—ss.

John Hodgson, being first duly sworn deposes and says: That he has and for a number of years last past has been consulting engineer for the American Can Company, and resides at Maywood, Illinois; that

prior to the formation of said American Can Company in 1901 affiant was associated in business with Edwin Norton and Norton Brothers in the manufacture of cans and can-making devices; that upon the invitation of said Edwin Norton affiant, in company with Edwin Norton, L. A. Norton, T. A. Assman and Mr. Adcock of the firm of Munday, Evarts & Adcock, patent attorneys, made a trip of inspection to the South Haven factory of Dunkley Company on September 26, 1904, to see certain canning machinery there in operation, including, among other devices, a new lye peach peeling machine consisting of lye tank and brushing apparatus; that on said the 26th day of September, 1904, there was only one of said lye peeling machines in the main fruit room of said factory, and the same was apparently new; that said trip of inspection was the only visit affiant saw the lye peach peeling machine at Dunkley Company's said South Haven factory.

That affiant is willing to testify to the facts herein stated in accordance with this affidavit in the above-entitled causes, or in any other suit or proceeding in which the same or similar issues are involved.

JOHN G. HODGSON.

Subscribed and sworn to before me this 18th day of February, 1919.

[Seal] (Signed) LESLIE E. BINCH,  
Notary Public in and for the County of Cook, State of Illinois.

[Endorsed]: Filed Feb. 24, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [120]

In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,

vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY, Plaintiff,

vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY, Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY, Plaintiff,

vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY, Plaintiff,

vs.

J. F. PYLE & SON, INC., Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY, Plaintiff,

vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY, Plaintiff,

vs.

SUNLIT FRUIT COMPANY, Defendant.

**Affidavit of Maud Howes.**

State of Michigan,

County of Kalamazoo,—ss.

Maud Howes, being duly sworn, deposes and says:

That she is now and for many years has been a resident of Kalamazoo, Michigan. At the present time she is employed as stenographer for E. M. Sargeant Coal Co. at Kalamazoo. Between the years 1901 and 1907 she was employed as stenographer and

assistant bookkeeper for the Clark Engine & Boiler Company at Kalamazoo. [121]

The photograph attached hereto and marked Exhibit "A" is a true photograph of page 331 of Ledger E of the Clark Engine & Boiler Company, and the photograph attached hereto and marked Exhibit "B" is a true photograph of page 432 of the same ledger. Referring to page 331 of the ledger (of which Exhibit "A" is a photograph) and in particular the account with the Dunkley Company, she made all of the entries in said account except the entries of May 31, 1904, \$1.50; September 9, 1904, \$22.88; September 26, 1904, \$140.00; September 30, 1904, \$8.71 on the debit side, and the entries of June 5, \$12.92; May 17, \$63.14, and July 16, \$1.50 on the credit side. The entries on page 432 (of which Exhibit "B" is a photograph) are not in her handwriting. The entries were made in the ledger by her directly from a book in which were kept letter-press copies of invoices for goods shipped. These letter-press copies were made as goods were shipped. Exhibit "C" hereunto attached is a correct copy of page 695 of volume 7 of letter-press copies of invoices of said company. In her opinion, she typed the invoice copied on this page of the letter-press book. Referring to the Dunkley account at page 331 of the ledger (Exhibit "A"), the figures appearing in said entry "7/695" refer to book 7 of invoices, page 695, of which page in said book Exhibit "C" is a true photograph.

That affiant was a witness in the case of Dunkley Company et al. v. Pasadena Canning Co. et al., in



the United States District Court for the Southern District of California, Southern Division, Equity C-8, and testified therein, giving her testimony by deposition taken at Kalamazoo, Michigan, and affiant hereby refers to her said testimony of record in that case and hereby makes her said testimony, as therein set forth, a part of this affidavit as if fully set forth therein. Affiant will testify in the above entitled causes or any of them, or in any other suit or proceeding involving the validity of letters patent 1,104,175 as to the facts [122] set forth in this affidavit:

(Signed) MAUD HOWES.

Subscribed and sworn to before me this 8th day of February, 1919.

[Notarial Seal]

(Signed) URAL S. ACKER,

Notary Public in and for the County of Kalamazoo,  
State of Michigan.

(Photographic Exhibits "A", "B", and "C", attached.)

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,

Attys. for Plff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [123]

In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Divison.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,

vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY, Plaintiff,

vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY, Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,              Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY,              Defendant.

**Affidavit of Jacob Hycoop.**

State of Michigan,  
County of Kalamazoo,—ss.

Jacob Hycoop, being first duly sworn, deposes  
[124] and says that during the year 1904 he was a  
partner of William Decker and joint proprietor of  
the Kalamazoo Machine and Tool Company, of  
Kalamazoo, Michigan; that as such partner he had  
joint supervision over the business of said Kalamazoo

Machine and Tool Company and the books of account which were kept by Mrs. Dorothy Janashak as book-keeper.

That affiant remembers doing work upon the order of Stewart Campbell during the spring of 1904, upon what Campbell called a "peach peeler"; that during the time that this work was in progress, Stewart Campbell was almost daily in affiant's shop assisting in and supervising said work; that said work was charged in the books of said Decker and Hycoop (Kalamazoo Machine and Tool Company) in the following items, to wit:

1904

Mar.	8.	On Peeler .....	2½	1.00
Mar.	11.	On Peeler .....	4½	1.80
Mar.	12.	On Peeler .....	1½	.60
Mar.	17.	On Peeler .....	1½	.60
Mar.	18.	On Peeler .....	4¾	1.90
Mar.	19.	On Peeler .....	9¼	3.70
Mar.	19.	6 5/16x3/4 S. S.....		.20
Mar.	21.	On Peeler .....	7	2.80
Mar.	29.	On Peeler .....	9¼	3.70
Mar.	30.	On Peeler .....	1½	.60

April 30.

S. Campbell 299.75

J. Courtney 306.45

That affiant is acquainted with Fred Scheid; that said Scheid was employed at affiant's said shop during the time that said peach peeler work was being done there, and assisted thereon.

That the account books herein referred to are now on file as Exhibits "A" and "B", with the depositions

of William H. [125] Decker and Dorothy Janashak in said case of Dunkley Company vs. Pasadena Canning Company, and affiant refers to said books of account and makes the same a part hereof as if fully set out herein or attached hereto.

That affiant gave testimony in the case of Dunkley Company et al. vs. Pasadena Canning Company et al., Equity C-8, in the United States District Court, Southern District of California, Southern Division, and affiant refers to the official transcript of said testimony and hereby makes the same a part hereof as if fully set forth herein; that affiant is willing to testify in accordance with this affidavit and the testimony given in said case, in any or all of the above-entitled causes, and in any other suit or proceeding in which the same or similar issues are involved.

(Signed) JACOB HYCOOP.

Subscribed and sworn to before me this 29th day of November, A. D. 1918.

[Notarial Seal]

(Signed) MORRIS S. ARNOLD,  
Notary Public in and for County of Kalamazoo, State of Michigan.

My commission expires June 27, 1922.

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [126]

In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,

vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY, Plaintiff,

vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY, Defendant.



IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,              Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY,      Defendant.

**Affidavit of Dorothy Janashak.**

State of Michigan,  
County of Kalamazoo,—ss.

Dorothy Janashak, being first duly sworn, deposes and says:

That she is now and for many years has been a resident of Kalamazoo, Michigan. During the years 1903-4 she kept the account books of the Kalamazoo Machine and Tool Company at Kalamazoo. This

was a company in which her brother-in-law, Will Decker, was interested. Entries in the books were made by her directly from time slips. These were handed to her every morning and she made the appropriate entries in the books. During these years considerable work was done by this company for the Dunkley Company. The charges in the books made against this company were paid by it. The entries in said books correctly show the transactions with the Dunkley Company.

Affiant was a witness in the case of Dunkley Company et al. vs. Pasadena Canning Company et al. in the United States District Court for the Southern District of California, Southern Division, Equity C-8, and testified therein giving her testimony by deposition taken at Kalamazoo, Michigan, and affiant hereby refers to her said testimony of record in that case and hereby makes her said testimony, as therein set forth, a part of this affidavit as if fully set forth herein. Affiant will testify in the above entitled causes or any of them, or in any other suit or proceeding involving the validity of letters patent 1,104,175 as to the facts set forth in this affidavit.

(Signed) DOROTHY JANASHAK.

Subscribed and sworn to before me this 8th day of February, 1919.

[Notarial Seal]

(Signed) URAL S. ACKER,

Notary Public in and for the County of Kalamazoo,  
State of Michigan.

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [128]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,

vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY,      Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,                  Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY,      Defendant.

**Affidavit of Leander Kern.**

State of Michigan,  
County of Kalamazoo,—ss.

Leander Kern, being first duly sworn, deposes and

says that he is now and for several years past has been a resident of Kalamazoo, Michigan; that his vocation is that of stationary engineer; that he was employed by Dunkley Company at Grant, Michigan, 1907, and at the Grant and Kalamazoo factories in 1909; that on or about the 7th day of December, 1909, affiant was sent to the South Haven factory of Dunkley Company for the purpose of preparing the factory for putting up pork and beans and that subsequently, to wit, early [129] in 1910, affiant was in said factory for the purpose of removing machinery, and upon both of said occasions affiant went into the office in said factory and carefully observed the contents of said office and that on neither of said occasions were there any books of account or records in said office.

That affiant gave testimony in the case of Dunkley Company et al. vs. Pasadena Canning Company et al. Equity C-8, in the United States District Court, Southern District of California, Southern Division, and affiant refers to the official transcript of said testimony and hereby makes the same a part hereof as if fully set forth herein; that affiant is willing to testify in accordance with this affidavit and the testimony given in said case, in any or all of the above-entitled causes, and in any other suit or proceeding in which the same or similar issues are involved.

(Signed) LEANDER KERN.

Subscribed and sworn to before me this 10th day of February, 1919.

[Notarial Seal]

(Signed) WM. F. C. DOORNINK.

Notary Public in and for County of Kalamazoo,  
State of Michigan.

My commisison expires July 10, 1919.

Received copy of the within affidavit this 17th day  
of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [130]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.



IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,  
vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY, Plaintiff,  
vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY, Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY, Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY, Plaintiff,  
vs.

J. F. PYLE & SON, INC., Defendant.

IN EQUITY No. 211.

DUNKLEY COMPANY, Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,

vs.

SUNLIT FRUIT COMPANY,      Defendant.

**Affidavit of Mrs. Leander Kern.**

State of Michigan,  
County of *Kalamazoo*,—ss.

Mrs. Leander Kern, being first duly sworn, [131] deposes and says that she is now and for 18 years last past has been a resident of Kalamazoo, Michigan; that in 1901 she was employed as housekeeper at the residence of S. J. Dunkley, in South Haven, Michigan.

That in the fruit season of 1902 she was engaged as forelady, or overseer, of the women who were doing piece work at the factory, said piece work including, during the peach season of 1902, the peeling of peaches by hand and by small Sinclair-Scott hand peeling machines; that the women who were thus engaged peeling peaches, were seated at small tables which were scattered about throughout the main room of the factory on the second floor; that affiant fixes the above dates by her diary of 1901 and also by a letter addressed to her at South Haven in 1902.

That during the peach season of 1902, all of the peaches canned in the South Haven factory were peeled by hand and by said small hand machines; that no peaches were peeled for canning purposes by the lye process during that season. That during the peach season of 1903, affiant was employed at Dunkley Com-

pany's South Haven factory as an inspectress; that it was affiant's duty as such, to have charge of the peeling of peaches and to inspect the same.

That immediately before the peach season of 1903, there was built and installed on the south side of the main room of the factory on the second floor, a table about 150 feet long, mounted upon a heavy raised platform, said table having in its center an endless conveyor belt about twelve inches wide; [132] that said long table took the place of most of the small tables which had been used the previous season, and the women who peeled the peaches were seated on chairs on said platform, on either side of said long table; that all of the peaches peeled commercially for canning purposes during the peach season of 1903, while affiant remained at said factory, were peeled by said women with knives by hand and with the small Sinclair-Scott hand peeling machines, which were mounted upon and attached to said peeling table; that no peaches during said period of time were peeled by the lye process commercially in said factory.

That it was the duty of affiant, in the inspection and supervision of said peeling of peaches, to examine the peaches as they were peeled and after they had been placed by the women in pans on said long table; and it was affiant's duty to empty said pans upon said conveyor belt and to minutely inspect said fruit; that no peaches were pitted at said long table during this period of time which had previously been peeled by the lye process.

That it was also affiant's duty to go out from time to time to the receiving porch, in order that a sufficient

supply of fruit should be arranged for, and in doing so she frequently consulted Mr. Abe Vanderbrook, who was in charge of the receiving and grading of said fruit. That the duties of affiant also carried her to all parts of the fruit room, where the peeling of the fruit and placing of the same in cans was done, and if there had been a peach peeling machine in that [133] room, either in operation or stored there, affiant would have known of it; but affiant asserts that during the period of her employment in the season of 1903 there was no lye peach peeling machine in said fruit room. That Mrs. George K. Brown was also employed in a similar capacity as inspectress during the peach season of 1903.

That affiant recalls the occasion of a picture being taken of said long table, with the women seated at either side of it, during the peach season of 1903; that a copy of said picture is Defendant's Exhibit 3 and 3a in the case of Dunkley Company et al. vs. Pasadena Canning Company et al., tried before Judge Trippet in May-July, 1918; that affiant appears in said photograph standing on the platform on the righthand side of said table, and that Melville E. Dunkley was present when said photograph was taken and instructed affiant to stand up on the platform and be taken in the photograph.

That during the spring and early summer of 1904, affiant worked at the South Haven factory, and there saw Dunkley's first commercial lye peach peeling machine being installed; that said machine was new, and no such machine had been used in the Dunkley factory at South Haven, prior to that time; that the

same was being set up by Stewart Campbell; that the long hand peeling table had been cut in two, one part being located on each side of the room, and remodeled to some extent for use as an inspection table.

(Signed) MRS. LEANDER KERN.

Subscribed and sown to before me this 3d day of December, A. D. 1918.

[Notarial Seal]

(Signed) WM. F. C. DOORNINK,  
Notary Public in and for the County Kalamazoo,  
State of Michigan.

My commission expires July 10, 1919.

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[134]

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [135]

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In the Southern Division of the United States District Court for the Northern District of California, Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. C. AINSELY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY,      Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,              Defendant.



IN EQUITY—No. 211.

DUNKLEY COMPANY, Plaintiff,

vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY, Plaintiff,

vs.

SUNLIT FRUIT COMPANY, Defendant.

**Affidavit of Mrs. Ed. Krugler.**

State of Michigan,

County of *Van Buren*,—ss.

Mrs. Ed. Krugler, being first duly sworn [136] deposes and says that she is now and for many years last past has been a resident of the City of South Haven, State of Michigan; that she was employed in the Dunkley factory in 1902, 1903 and 1904. In the peach season of 1902 and 1903 affiant was employed peeling peaches by hand, and in the year 1903 she was likewise employed peeling peaches by hand at the long hand peeling table which was installed in the summer of 1903; that she pitted no lye peeled peaches and saw none pitted by any one else during said peach season of 1903.

That during the season of 1903 there was no lye peach peeling machine operated commercially in the Dunkley factory, but, on the contrary, all peaches were peeled by hand and by the little hand operated machines; that during the peach season of 1904, peaches were peeled commercially by the lye peach

peeling machine for the first time in said factory; that during said season affiant was employed to inspect the peaches as they came from said peeler.

That affiant gave testimony in the case of Dunkley Company et al. vs. Pasadena Canning Company et al., Equity C-8, in the United States District Court, Southern District of California, Southern Division, and affiant refers to the official transcript of said testimony and hereby makes the same a part hereof as if fully set forth herein; that affiant is willing to testify in accordance with this affidavit and the testimony given in said case, in any or all of the above entitled causes, and in any other suit or proceeding in which the same or similar issues are involved.

(Signed) MRS. ED. KRUGLER.

Subscribed and sworn to before me this 30th day of November, A. D. 1918.

[Notarial Seal]

(Signed) ROY S. McCRIMMON,  
Notary Public in and for the County of Van Buren,  
State of Michigan.

My commission expires Sept. 22, 1919. [137]

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [138]

In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,

vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY, Plaintiff,

vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY, Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,                  Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant,

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY, a Corporation,  
Defendant.

[139]

State of Michigan,  
County of Van Buren,—ss.

**Affidavit of Edwin B. Mapes.**

Edwin B. Mapes, being first duly sworn, deposes and says that he is now and since the year 1901 has been a resident of the City of South Haven, State of Michigan, and during that time has conducted a ma-

chine-shop in the said city; that a model or experimental brush peach peeling machine, without any lye tank was built in the basement of Dunkley Company's factory at South Haven by Stewart Campbell in the fall, of 1903; that affiant furnished some parts for said machine and did some work thereon for which he made charges and recorded them in his account book as follows:

### DUNKLEY CANNING FACTORY.

Page 77.

1903

Sept. 28.	To 2 iron pulleys for peach washer...	\$2.00
Sept. 28.	6 hours' time on peach machine ....	2.40
Sept. 29.	6½ hours' time and 2 lbs of babbits..	3.00
Oct. 1.	1½ hours' time, 2¾ set screws.....	.70
Oct. 1.	Bore 2 pulleys.....	.60
Oct. 3.	Cutting shaft, one hour.....	.40
Oct. 5.	3 hours' time.....	1.20
Oct. 6.	Time on friction, 8 hours.....	3.20
	Leather for friction.....	1.00

That in the month of October, 1903, affiant saw said experimental machine in operation, about a dozen peaches being run through it at that time; that affiant was a witness in the case of Dunkley Company et al. -vs- Pasadena Canning Co. et al, Equity C-8, tried in Los Angeles May-July, 1918, and there was produced in evidence as Defendant's Exhibit No. 11, said experimental model machine, constructed by Stewart Campbell in the year 1903 and affiant identified thereon all parts of the machine furnished by him as afore-said and also [140] identified the frame of said Exhibit No. 11 as the frame of the machine which was con-

structed in the year 1903; that affiant also testified in the case of Dunkley Company -vs- Central California Canneries et al, S. F. 201, and affiant refers to transcript of the testimony given by him in the said Pasadena Canning Company and Central California Canneries Company cases and makes the same a part thereof as fully set forth herein; that affiant is willing, if called upon in the above-entitled causes or any of them or in any other case or proceeding in which the validity of Letters Patent No. 1,104,175 is involved to testify in accordance with the foregoing affidavit.

(Signed) EDWIN B. MAPES.

Subscribed and sworn to before me this 30th day of November, 1918.

[Notarial Seal]

(Signed) ROY S. McCRIMMON,

Notary Public in and for the County of Van Buren,  
State of Michigan.

My commission expires Sept. 22, 1919.

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [141]



In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,

vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY, Plaintiff,

vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY, Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY, Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY, Plaintiff,  
vs.

J. F. PYLE & SON, INC., Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY, Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant,

IN EQUITY—No. 212.

DUNKLEY COMPANY, Plaintiff,  
vs.

SUNLIT FRUIT COMPANY, a Corporation,  
Defendant.

**Affidavit of William McEwing.**

State of Michigan,  
County of *Van Buren*,—ss.

William McEwing, being first duly sworn, deposes and says that he has [142] been a resident of South Haven, Michigan for many years, and during most of that time has been engaged in the business of fruit canning; that affiant's cannery is situated a short dis-

tance from where the Dunkley factory stood prior to its destruction by fire; that affiant has used the lye peeling process for removing the skins from peaches for many years; that said process was employed by affiant during the years 1901 and 1902, as well as other years following; affiant fixes these dates of his use of the lye process by invoices, the originals of which were introduced in evidence in the case of Dunkley Company et al. vs. Pasadena Canning Company, et al, being Plaintiff's Exhibit No. 32 1 to 6, tried in the Southern District of California, Southern Division, May-July, 1918, which invoices show the purchase by affiant of lye in quantities sufficient for extensive commercial use of the lye process in peeling peaches; that affiant was one of the appraisers in the estate of Dunkley Company, Bankrupt, in the year 1908, and in that capacity examined everything in the factory, including the contents of the office, and affiant states that there were no books of account of any kind in the factory at that time.

That affiant testified by deposition in the case of Dunkley Company et al. vs. Pasadena Canning Company, et al, Equity C-8, and affiant refers to said deposition and hereby makes the same a part hereof as if fully set forth herein; that affiant is willing to testify in any or all of the above-entitled causes and in any other suit or proceeding involving the validity of letters patent 1104175, and that affiant will testify therein in accordance with this affidavit.

(Signed) WILLIAM McEWING.

Subscribed and sworn to before me this 30th day of November, A. D. 1918.

[Notarial Seal]

(Signed) ROY S. McCRIMMON,  
Notary Public in and for the County of Van Buren,  
State of Michigan.

My commission expires Sept. 22, 1919. [143]

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [144]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY,      Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,              Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant,

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY, a Corporation,  
Defendant.

**Affidavit of Bert McFarland.**                      [145]

State of Michigan,  
County of Van Buren,—ss.

Bert McFarland, being first duly sworn, deposes and says: That he has lived in the City of South Haven for 30 years; that he worked first at the Dunkley factory in September, 1903, and continued during the remainder of that year.

That during the peach season of 1903 he was employed in various lines of work, both mechanical and otherwise; that a greater portion of the time during the peach season of 1903 affiant worked in the main fruit room near the long hand peach peeling table which was installed during the summer of 1903; that affiant widened out or extended the north platform of said table by adding thereto a plank 12 inches wide and 2 inches thick, this for the purpose of facilitating the work of the foreladies, or checkers, who inspected the fruit as peeled by hand and dumped the same from pans upon the central conveyor belt.

In the fall of that year affiant saw the small experimental brush machine in the basement of the factory; that no peaches were peeled by the lye process commercially in the year 1903; that there was no lye peach peeling machine on the main or second floor of the



factory during the year 1903; that the first machine for peeling peaches constructed with lye tank was made and installed during the year 1904; that the same was operated by one William Tierce during the season of 1904; that the experimental model machine which affiant saw in the basement in the fall of 1903 is Defendant's Exhibit "11" in the case of Dunkley Company et al. vs. Pasadena Canning Company et al., Equity C-8, in the United States District Court, Southern District of California, Southern Division.

[146]

That the sketch, or floor plan, entitled "Second Floor Dunkley Factory 1904" hereto attached is a fair and approximate representation of the character and location of machines during the season of 1904 as thereon described; that during the season of 1904 there was but one lye peach peeling machine in the main room or in operation in said Dunkley factory, and the same was located on the south side toward the east end of the main room of said factory.

That affiant testified in the said case of Dunkley Company et al. vs. Pasadena Canning Company et al. Equity C-8, tried before Judge Trippet in May-July, 1918, and he refers to the official transcript of his testimony therein, and hereby makes the same a part hereof as if fully set forth herein.

Affiant also makes the sketch or floor plan attached hereto a part hereof, and designates the same Exhibit "A" of this affidavit.

Affiant will, if called upon, testify to the facts recited herein in accordance herewith in the above entitled causes or any of them, or in any other suit or

proceeding in which the validity of letters patent 1,104,175 is involved, or in which the dates and circumstances of the construction of the said machines may be in issue.

(Signed) BERT McFARLAND.

Subscribed and sworn to before me this 30th day of November, A. D. 1918.

[Notarial Seal]

(Signed) ROY S. McCRIMMON,  
Notary Public in and for the County of Van Buren,  
State of Michigan.

My commission expires Sept. 22, 1919.

Attached hereto is Exhibit "A". [147]

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [148]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY,      Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,              Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY,      Defendant.

**Affidavit of John C. Miller.**

State of Alabama,  
County of Mobile,—ss.

John C. Miller, being first duly sworn, deposes and [149] says that his father, D. M. Miller was proprietor of a plumbing business in South Haven, Michigan, and was so engaged until the summer of 1903, and I know that on July 23, 1903, my said father sold and delivered to Dunkley Company, of South Haven, three hundred feet of double beaded galvanized trough; that upon said date the same was charged against Dunkley Company in the books of said plumbing business in the following entry, to wit: "July 23, 1903, 300 feet of double beaded galvanized trough, at 6½ cents a foot, \$19.50." Affiant succeeded his father in said plumbing business and remained in said business for about two years, and now has the books of said business in his possession.

That affiant gave testimony by deposition in the case of Dunkley Company et al vs. Pasadena Canning Company et al, Equity C-8, in the United States

District Court in and for the Southern District of California, Southern Division, and affiant refers to said deposition and hereby makes the same a part hereof as if set forth in full herein.

That affiant is willing to testify again to the same effect, either in the above-entitled causes or in any other cause or proceeding involving the same or similar issues.

JOHN C. MILLER.

Subscribed and sworn to before me this 9th day of December, 1918.

[Seal] ANNIE LOUISE STAATS,  
Notary Public, Mobile County, Ala.

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [150]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY,      Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,              Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY,  
Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY,      Defendant.

**Affidavit of Mrs. Eleanor Moore.**

State of Michigan,  
County of *Van Buren*,—ss.

[Notary Seal]

Mrs. Eleanor Moore, being first duly sworn, [151] deposes and says that she has lived at South Haven, State of Michigan, practically all of her life; that she is now employed as head of the drygoods department of Hale and Company, in that city; that she worked for Dunkley Company in the South Haven factory during the peach seasons of 1901 to 1905, inclusive; that in the peach season of 1903 she worked on the "filling table," in the room where all of the fruit was peeled and the peaches were placed in the cans, until October 10th.

That all of the peaches canned during that period were peeled by hand and that there was no lye machine used commercially in said South Haven factory during that time; that the first commercial lye peeling



machine was installed in the South Haven factory in the year 1904, and was used for the first time during that season.

That affiant gave testimony in the case of Dunkley Company et al. vs. Pasadena Canning Company et al, Equity C-8, in the United States District Court, Southern District of California, Southern Division, and affiant refers to the official transcript of said testimony and hereby makes the same a part hereof as if fully set forth herein; that affiant is willing to testify in accordance with this affidavit and the testimony given in said case, in any or all of the above-entitled causes, and in any other suit or proceeding in which the same or similar issues are involved.

(Signed) MRS. ELEANOR MOORE.

Subscribed and sworn to before me this 30th day of November, A. D., 1918.

[Notary Seal]

(Signed) ROY S. McCRIMMON,  
Notary Public in and for County of Van Buren,  
State of Michigan.

My commission expires Sept. 22, 1919.

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [152]

In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation.

Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERS

COMPANY,

Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY,

Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,

Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY,

Plaintiff,

vs.

J. C. AINSLEY PACKING COMPANY,

Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY,

Plaintiff,

vs.

ANDERSON-BARNGROVER MANU-

FACTURING COMPANY, Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,              Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY, a Corporation,  
Defendant.

**Affidavit of George H. Myhan.**

State of Michigan,  
County of Van Buren,—ss.

George H. Myhan, being first duly sworn, deposes and says that: He has been a resident of South Haven for 54 years [153] and now owns and operates at that place a summer hotel; is also interested in a factory and owns an orchard in that vicinity.

For a period of eight years beginning late in 1903, he was Postmaster at South Haven. In the peach season of 1903 he was employed by S. J. Dunkley to buy peaches, and during the time of that employment was frequently in the Dunkley factory. During the peach season of 1903 he saw the experimental peach peeling machine down in the basement of the Dunkley factory, and affiant saw Stewart Campbell working on said machine; that during the peach season of 1903 there was no lye peeling machine on the main or second floor of the factory; that peaches were not peeled in commercial quantities by the lye process in that factory during that year; that the first commercial lye peeling machine was installed in 1904 and was used commercially for the first time during the peach season of 1904; and that affiant saw the same in operation at that time in said factory.

That affiant gave testimony in the case of Dunkley Company et al. vs. Pasadena Canning Company et al., Equity C-8, tried before Judge Trippet in the Southern District of California in May-July, 1918, and affiant refers to the transcript of record of his testimony taken in that case and hereby makes the same a part hereof as if fully set forth herein; that affiant is willing to testify in this case or in any other case or proceeding in which the validity of letters patent No. 1,104,175 or the dates and circumstances of the construction of the Dunkley peach peeling machines are involved.

(Signed) GEORGE H. MYHAN.

Subscribed and sworn to before me this 30th day of November, A. D. 1918.

[Notarial Seal]

(Signed) ROY S. McCRIMMON,  
Notary Public in and for the County of Van Buren,  
State of Michigan.

My commission expires Sept. 22, 1919. [154]

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL,  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [155]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,

vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY, Plaintiff,

vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY, Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY, Plaintiff,

vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY, Plaintiff,

vs.

J. F. PYLE & SON, INC., Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY, Plaintiff,

vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY, Plaintiff,

vs.

SUNLIT FRUIT COMPANY, a Corporation,  
Defendant.

**Affidavit of Charles R. Newton.** [156]

State of Michigan,  
County of Van Buren,—ss.

Charles R. Newton, being first duly sworn deposes and says: That he has lived in South Haven since 1902, and follows the vocation of painter and decorator; that he was employed by Dunkley in the South Haven factory during the peach season of 1902, 1903 and 1904; that it was his duty in the course of said employment to put syrup into the cans after the fruit had been placed in them, and in so doing affiant was enabled to see and observe the appearance of the peaches as the same were handled by him; that there are marked differences in the appearance of lye peeled and hand peeled peaches; that during the year of 1903 no lye peeled peaches were canned in the Dunkley factory in commercial quantities; that during the fall of 1903 affiant saw in the basement of the factory a small experimental machine which was under construction; that there was no lye peeling machine on the main or second floor of the factory during the peach season of 1903; that the first lye tank and the first commercial lye peeling brush machine ever operated at the Dunkley factory were installed in the year 1904 and operated during the peach peeling sea-



son of 1904, and William Triage was in charge of said combined machine during its operation.

That affiant testified in the case of Dunkley Company et al vs. Pasadena Canning Company et al., Equity C-8, tried before Judge Trippet in the Southern District of California in May-July, 1918, and affiant refers to the transcript of his testimony given in that case and hereby makes the same a part hereof as if fully set out herein; that affiant is willing to testify in the above entitled case or in any other cause or proceeding in which the validity of letters patent 1104175 or [157] the dates and circumstances of the construction of the Dunkley peach peeling machines may be involved.

(Signed) CHAS. R. NEWTON.

Subscribed and sworn to before me this 30th day of November, A. D. 1918.

[Notarial Seal]

(Signed) ROY S. McCRIMMON,  
Notary Public in and for Van Buren County, State of Michigan.

My commission expires September 22, 1919.

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [158]

In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,

vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY, Plaintiff,

vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY, Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,                      Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY, a Corporation,  
Defendant.

**Affidavit of Robert Newton.**

State of Michigan,  
County of Kalamazoo,—ss.

Robert Newton, being first duly sworn, deposes and says that he is a resident of the City of Kalamazoo, State of Michigan, and is employed by the firm of Wheeler and Blaney, Plumbers; that affiant was employed by Dunkley Company at its South Haven factory during the peach season of 1903 and 1904; that

some time during the summer of 1903 affiant saw William Brunker make experiments in treating peaches with caustic soda to disintegrate their skins and in removing the same by hand by the use of brushes and water; that later on in the peach season of 1903, affiant saw Stewart Campbell engaged in constructing the first or experimental model peach peeling machine down in the basement of the factory; that said machine had no lye tank and was about  $3\frac{1}{2}$  feet high, 3 feet wide and 6 feet long; that about the middle or latter part of October, 1903, affiant saw William Brunker and Stewart Campbell trying out said experimental machine in the basement by running a few peaches through it; that affiant testified in the Dunkley-Beekhuis Interference Proceedings that he saw said experimental machine operated in July, 1903; that affiant was mistaken in said testimony and gave said testimony without opportunity for thinking the matter over seriously or of refreshing his recollection; that affiant is now positive that the facts are as herein recited; that in the peach season of 1904 there was operated a large commercial peach peeling machine, consisting of lye tank and brushing apparatus, said lye tank being about 12 feet long, 4 feet wide and 18 inches deep in its deepest part, with a round transverse receptacle across the bottom thereof; and [167] the brushing apparatus being a wooden frame three line machine; that said lye peach peeling machine was the first machine which was ever installed in the Dunkley factory for commercial purposes; that during the peach season of 1903 no lye peach peeling apparatus was used commercially in said factory; that during the

peach season of 1904, Mr. William Triece was in charge of the operation of said first commercial lye peach peeling machine; that said 1904 machine was built in the early part of that year and was new and had been previously unused when first operated late in the summer of 1904; that the three photographs hereto annexed are copies of photographs of the brush part of said 1904 lye peach peeling machine, the same being marked Exhibits "A", "B" and "C2" respectively and are hereby made a part of this affidavit; that affiant gave testimony in the case of Dunkley Company et al. vs. Pasadena Canning Company et al., Equity C-8, tried before Judge Trippet in Los Angeles in May-July, 1918, and affiant refers to the transcript of said testimony and hereby makes the same a part hereof as if fully set out herein; that affiant is willing to testify in any or all of the above-entitled causes or in any other case or proceeding in which the validity of Letters Patent, dates or circumstances of the making of said lye peach peeling machines may be involved.

(Signed) ROBERT NEWTON.

Subscribed and sworn to before me this 14th day of February, 1919.

(Signed) NORBERT B. WHEELER,  
Notary Public in and for the County of Kalamazoo,  
State of Michigan.

My commission expires January 15th, 1921.

(Exhibits "A", "B", and "C" same as exhibits attached to George K. Brown affidavit.)

[Endorsed]: Filed Feb. 24, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [161]





ary 12, 1905; as well as that certain letter from O. W. Norton to S. J. Dunkley, dated September 15, 1904; and that the reading of this correspondence has refreshed his recollection on the subject thereof; and

That he went to Kalamazoo to work for the Dunkley Company in the latter part of October or early part of November, 1902, and that he saw no lye tank or roller brush peach peeling machine at the Dunkley factory at Kalamazoo during that year; and

That in the following year, to wit, 1903, a long table erected upon a platform was installed along the south side of the main factory floor of the South Haven plant on which peaches were peeled and pitted by hand, and by small rotary hand machines which were fastened to the table; and that the women were seated at the table on chairs placed on the platform; and that a conveyor belt extended the entire length of the table, and after the peaches were thus peeled and pitted by hand each panful was dumped on to the belt and carried to a long filling table which started at the west end of the peeling table and ran to nearly the west end of the main floor room; and

That the peeling table and filling table *combined* occupied practically the entire south side of the main floor, and

That no rotary brush machine for peeling peaches was installed or operated commercially at the Dunkley factory at South Haven during the peach season of 1903; and

That the printed diagram endorsed at the right hand lower corner in print as follows: (L. A. Exhibit 19—for identification) is approximately a correct



representation of the posi- [163] tion and relative space occupied by the peach peeling table and filling table and syruper on the south side of the main or "second-floor Dunkley factory, 1903"; and that the same is attached hereto and made a part hereof and explanatory of the statements heretofore made in this affidavit on this subject, and

That a model or experimental peach peeling machine without any lye tank was built by Stewart Campbell in the fall of that same year in which the long peach peeling table was installed; and

That the photograph hereto attached and bearing at the bottom thereof the printed endorsement, "Photograph of Dunkley's First Machine (3N L. A., Ex. No. 11; 5N S. F., Ex. No. 10; 4N Int., Ex. No. 1). Conceived and Disclosed August, 1903. Constructed September-October, 1903", is a true and correct photograph of the model or experimental brush peach peeling machine as I remember it which was so constructed in that year; and that some time late in that peach season this model or experimental machine was tried out with peaches which had been immersed in a lye solution, heated in an ordinary receptacle of some kind, and that this experiment and several other similar experiments which were made at or about the same time were successful; and that the brush part of the machine consisted of one carrier belt with brushes on it and two parallel roller brushes which revolved and brushed the peaches as they advanced on the carrier belt; and that a few inches above this carrier belt a perforated water pipe about one inch in diameter, or less, extended the full length of the frame of the machine: and [164]

That during the following year a lye tank was built by the Dunkley Company to be used in treating peaches with a lye solution preparatory to putting them through the brush and spraying machine, and that this is the lye tank referred to in the aforesaid letters of S. J. Dunkley, Edwin Norton, and O. W. Norton, which are dated respectively in the year 1904; and that this was the first lye tank that the Dunkley Company ever used with which to peel peaches by the lye process at its factory at South Haven; and that during this same year, 1904, another brush peeling machine was constructed for the Dunkley Company; and that this machine had three carrier belts and three sets of longitudinal roller brushes, and was intended to have three times the capacity of the model or experimental brush machine and was called an three-line machine; and that this was the first roller brush peach peeling machine for commercial use that was built for the Dunkley Company and installed at its factory in South Haven, or elsewhere; and that this is the brush machine which is referred to in the aforesaid letters of S. J. Dunkley, Edwin Norton, and O. W. Norton, beginning with the letter of S. J. Dunkley to O. W. Norton, dated November 7th, 1903; and the first commercial use of a roller brush peach peeling machine was during the season that Hodgson, Lawrence, Edwin Norton, Assman, and Adcock made an inspection trip to South Haven; and

That, "the lye machine now nearly completed with the rotary cleaner attached", which is mentioned in the letter of S. J. Dunkley to Edwin Norton dated February 10, 1904, was commonly known and re-

ferred to by the Dunkley employees at that time as the "Prevaricator"; and that this is the first complete [165] prevaricator, to wit, rotary brush or peeling machine with lye tank attached, that was ever set up or operated at the Dunkley factory at South Haven; and that the affiant saw this complete machine set up and operated at the Dunkley factory at South Haven in the year 1904; and

That before this prevaricator was installed the aforesaid long peeling table was cut about in half, and that one-half of this table was installed on the north side of the room on the main floor and the other half on the south side of the room; and that the prevaricator or three-line rotary brush machine with lye tank attached was installed on the south side of the room, east of the remaining half of the hand peeling table, with two machines known as the "Campbell pitters" between the east end of the hand peeling table and the delivery end of the rotary brush machine, so as to make a direct line of operation for the peaches from the lye tank into the rotary brush machine, and thence to the Campbell pitters, and thus to the hand peeling table which was transformed into an inspection and trimming table, and then to the filling table, and thence to the syruper; and

That five or six pitting machines of a different type called the Kalamazoo pitters were installed on the north side of the room so as to make another direct line of operation consisting of these Kalamazoo pitters, from which the peaches went to the other half of the hand peeling table which had also been transformed into an inspection and filling table; and that

the diagram which is attached hereto and endorsed in the right hand lower corner (L. A. Exhibit 6—For Identification) is approx- [166] imately a true and correct representation of the second floor “Dunkley factory 1904” as it existed during the peach season of 1904; and that said diagram is attached hereto and made a part of this affidavit; and

That said model or experimental brush machine had a wooden frame, and that said three-line commercial brush machine also had a wooden frame; and

That the following year, to wit, in 1905, the Dunkley Company caused a new type of brush machine to be constructed with an iron frame, and only two carrier belts with only two sets of rotary brushes, and some of these iron frame machines were sold on guarantee subject to successful test to the California Fruit Canners’ Association, and shipped to its plant at Chico, California, and affiant went there as the agent of the Dunkley Company to direct the installation of the same and to supervise the tests and try-outs of the same and that said machines were rejected by the California Fruit Canners’ Association as not as satisfactory as the so-called Beekhuis machine which the California Fruit Canners’ Association was then using, and the installation of which at its Chico factory was completed just before the commencement of the peach season of 1905; and before the completion of the installation of the Dunkley lye tank and roller brush machine; and

That the Dunkley Company had only one lye tank and only two roller brush machines, to wit, the model or experimental machine and the three-line commercial machine, made prior to January, 1905; and

That the first peeling of peaches commercially by the lye process by the Dunkley Company at South Haven was [167] done in the year after the long hand peeling table was installed, and the year after the model or experimental machine was made; and

That the first iron frame machine was made the same year that I went to Chico, California, to install some rotary brush peach peeling machines; and

That the model or experimental brush machine without any lye tank was made the same year that the long hand peeling table was used, and that it was only used experimentally in that year, and that affiant did not see it used otherwise during any year, and that affiant is ready and willing to testify to the truth of the foregoing facts as they have been herein stated by him whenever called upon so to do in the above-entitled case, or otherwise.

(Signed) ARTHUR W. NORTON

Subscribed and sworn to before me this sixth day of December, A. D. 1918.

[Notary Seal]

(Signed) HOWARD D. ADAMS,  
Notary Public.

My commission expires May 1st, 1920. [168]

State of Maryland,  
Baltimore City, Sct. No. 578 N. P.

I, Stephen C. Little, Clerk of the Superior Court of Baltimore City, do hereby certify That Howard D. Adams Esquire, before whom the annexed acknowledgment and affidavit was made, and who has hereto subscribed his name, was at the time of so doing, a Notary Public of the State of Maryland, in and for



the City of Baltimore, residing in said City and State, duly commissioned and sworn, and authorized by law to administer oaths and take acknowledgments, or Proof of Deeds to be recorded therein. I further certify that I am acquainted with the handwriting of the said Notary, and verily believe the signature to be his genuine signature.

In Testimony Whereof, I hereto set my hand and affix the seal of the Superior Court of Baltimore City, the same being a Court of Record, this 6 day of December, 1918.

[Seal]

(Signed) STEPHEN C. LITTLE,  
Clerk of the Superior Court of Baltimore City.

(Attached hereto are exhibits "A", "B", and "C".)

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [169]

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In the District Court of the United States for the  
Northern District of California.

No. 201.

DUNKLEY COMPANY, Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES, et al,  
Defendants.

**Supplemental Affidavit of Arthur W. Norton.**

County of Baltimore,  
State of Maryland,—ss.

Arthur W. Norton, being duly sworn, deposes and says: That he is the same Arthur W. Norton who made his affidavit in the above entitled action, and sworn to before Howard D. Adams, a notary public, under date of December 6th, 1918, and he makes this affidavit as supplementary thereto; that affiant has examined Patent Appeal Docket No. 790 of the Court of Appeals, District of Columbia, being the record in an appeal from the Commissioner of Patents in Interference, No. 30,610, entitled Samuel J. Dunkley, Appellant, vs. Hermanus A. Beekhuis, and affiant has particularly examined photographs appearing on pages 476, 477 and 478 and which are designated thereon respectively as "Dunkley's Exhibit No. 2, Photograph 1 of Second Machine", "Dunkley's Exhibit No. 2, Photograph 2 of Second Machine", and "Dunkley's Exhibit No. 2, Photograph 3 of Second Machine"; that said photographs are true and correct photographs of the brush portion of S. J. Dunkley's first commercial peach peeling machine, and that the apparatus represented in said photographs was made in the spring of 1904 and first operated in the summer and fall of 1904 [170] in the Dunkley Company factory at South Haven; that said machine, the brush portion of which is so shown in said photographs, is the machine referred to by affiant in his said affidavit of December 6, 1918, on page 4, page 5, page 6 at line 6, and on page 6 at line 26, thereof; that said machine



was in fact the "second" machine made for use in the Dunkley factory as indicated in said Dunkley-Beekhuis Interferent Record, Patent Appeal Docket No. 790, the "first" machine being the so-called "experimental model" machine made in the fall of 1903, a photograph of which is annexed to affant's affidavit of December 6, 1918, and also appears on page 475 of said Dunkley-Beekhuis Interference Record, Patent Appeal Docket 790.

ARTHUR W. NORTON.

Subscribed and sworn to before me this 10th day of February, 1919.

[Notarial Seal]

ELIZABETH A. PARKER,  
Notary Public in and for the County of Baltimore,  
State of Maryland.

My commission will expire May 1, 1920.

Attached hereto are exhibits "A", "B" and "C".

[Endorsed]: Filed Feb. 24, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [171]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY,      Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,              Defendant.

## IN EQUITY—No. 211.

DUNKLEY COMPANY, Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

## IN EQUITY—No. 212.

DUNKLEY COMPANY, Plaintiff,  
vs.

SUNLIT FRUIT COMPANY, a Corporation,  
Defendant.

[172]

## Affidavit of John F. Noud.

State of Michigan,  
County of *Van Buren*,—ss.

John F. Noud, being first duly sworn, deposes and says: That he is a resident of South Haven, Michigan, and is Secretary and Treasurer of the John F. Noud Company, which has been engaged in the lumber business at South Haven for many years; that during the months of July and August, 1903, affiant sold to Dunkley Company a bill of lumber which was delivered to their factory.

That affiant has testified by deposition in the case of Dunkley Company et al. vs. Pasadena Canning Company et al., Equity C-8 in the United States District Court in and for the Southern District of California, Southern Division, and in said deposition was included a copy of the account of the John F. Noud Company with Dunkley Company showing in detail the amounts and items of said lumber. Affiant refers

to said deposition given in said case, and hereby makes the same a part hereof as if fully set forth herein; that affiant is willing to give like testimony by deposition in the above entitled causes, or in any other proceeding involving the same issues.

(Signed) JOHN F. NOUD.

Subscribed and sworn to before me this 14th day of December, A. D. 1918.

[Notarial Seal]

(Signed) ROY S. McCRIMMON,  
Notary Public in and for the County of Van Buren,  
State of Michigan.

My commission expires Sept. 22, 1919.

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [173]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY,      Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,              Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY, a Corpora-  
tion,                                      Defendant.

**Affidavit of Nicholas Plating.**

State of Michigan,  
County of Kalamazoo,—ss.

Nicholas Plating, being first duly sworn, deposes and [174] says: That he is 53 years of age; was born in Kalamazoo, Michigan, and has resided in said city practically all of his life; that he has been in the boiler business in Kalamazoo for 33 years, being employed practically all of that time by Clark Engine & Boiler Company; that he has read the letter of Clark Engine & Boiler Company addressed to Dunkley Company under date of April 21, 1903, as reported in the transcript of record of the above-entitled causes, and that the same does not refer to any tank made for a lye peeling machine, but does refer to a soup tank which was manufactured by Clark Engine & Boiler Company for Dunkley Company in the spring of 1903; that said tank was a round, upright tank about 30 inches in diameter and four feet high; that said tank had a flanged top with



41 studs in said flange and with rubber gaskets thereon, and with removable lid, said lid being fastened down with said stud bolts.

That affiant recalls the making of said tank and knows that it was used by Dunkley Company in its factory at Kalamazoo later on that year for the cooking of soup for canning purposes; that soon after the delivery of said tank it was reported to affiant that the tank leaked, and affiant thereupon went to said factory to examine the tank and upon that occasion he was given some soup out of the tank to drink; that said tank was a galvanized tank and the lid thereof had two handles attached for the purpose of removing and replacing said lid; that a photographic copy of the invoice of Clark Engine & Boiler Works under date of April 20, 1903, covering said soup tank, is attached hereto and marked Exhibit "A" and made a part hereof.

That the first lye tank which was made by Clark Engine & Boiler Company for Dunkley Company was made in January, 1904, and was similar in design to photograph 7 shown in patent drawings accompanying letters patent No. 1,104,175.

That affiant gave testimony in the case of Dunkley Company et al. vs. Pasadena Canning Company et al., Equity C-8 [175] in the United States District Court, Southern District of California, Southern Division, and affiant refers to the official transcript of said testimony and hereby makes the same a part hereof as if fully set forth herein; that affiant is willing to testify in accordance with this affidavit, and the testimony given in said case, in any or all of

the above-entitled causes, and in any other suit or proceeding in which the same or similar issues are involved.

(Signed) N. PLATING.

Subscribed and sworn to before me this eighth day of February, A. D. 1918.

[Notarial Seal]

(Signed) URAL S. ACKER,  
Notary Public in and for the County of Kalamazoo,  
State of Michigan.

Attached hereto is exhibit "A".

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [176]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. C. AINSLEY PACKING COMPANY, .  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY,      Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,              Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY,      Defendant.

**Supplemental Affidavit of Nicholas Plating.**

State of Michigan,  
County of Kalamazoo,—ss.

Nicholas Plating, being first duly sworn, deposes and says:

That he is now and for practically all of his life has been a resident of Kalamazoo, Michigan. He is a boilermaker, and for nearly thirty-three years has worked for the Clark Engine & Boiler Co. While with that company he worked on two tanks for the Dunkley Company. One was a boat-shaped tank. Exhibit "A" attached hereto is a true photograph of a crude sketch made by him of this tank. Exhibit "B" hereto attached is a true photograph of a sketch made by him of the other tank referred to. This was a soup [177] tank. He is of the opinion that the letter-press copy of the invoice of the Clark Engine & Boiler Co. of April 20, 1903, of which Exhibit "C" is a true photograph, covers this soup tank. The soup tank was a round kettle with a head in the bottom, flanged over the top about two inches, with stud bolts in the

flange about two inches apart and with rubber gasket on top of the flange. The lid or cover of the tank was made steam tight by the stud bolts. The tank was about thirty inches in diameter and about four feet high. The items specified in said invoice of April 20, 1903, correspond with the material used in the said soup tank. Affiant does not remember any other tanks to have been made by Clark Engine & Boiler Co. for Dunkley Company during the years 1902 to 1905, inclusive.

Affiant was a witness in the case of Dunkley Company et al. vs. Pasadena Canning Company et al., in the United States District Court for the Southern District of California, Southern Division, Equity C-8, and testified therein, and affiant hereby refers to the transcript of his testimony of record in that cause and hereby makes said transcript a part of this affidavit as if fully set forth herein; that affiant will testify in the above titled causes or any of them, or in any other suit or proceeding involving the validity of letters patent 1,104,175 as to the facts set forth in this affidavit.

(Signed) N. PLATING.

Subscribed and sworn to before me this 8th day of February, 1919.

[Seal] (Signed) URAL S. ACKER,  
Notary Public in and for the County of Kalamazoo,  
State of Michigan.

Photographic Exhibits "A" and "B", attached.  
Exhibit "C" the same as Exhibit "A" attached to  
N. Plating's affidavit of Feb. 8, 1918. [178]

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL, and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [179]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,

vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY,      Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,              Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY,      Defendant.

**Affidavit of Louis Payne.**

State of Michigan,  
County of Kalamazoo,—ss.

Louis Payne, being first duly sworn, deposes [180]



and says that he is and for many years last past has been a resident of the City of Kalamazoo, Michigan; that during the spring of 1904 affiant made for Dunkley Company, upon the order of Stewart Campbell, certain patterns for parts of a peach peeling machine, which Campbell informed him was a new device which had never been used commercially in the peeling of peaches before that time.

That affiant gave testimony in the case of Dunkley Company et al. vs. Pasadena Canning Company et al., Equity C-8, in the United States District Court, Southern District of California, Southern Division, and affiant refers to the official transcript of said testimony and hereby makes the same a part hereof as if fully set forth herein; that affiant is willing to testify in accordance with this affidavit and the testimony given in said case, in any or all of the above-entitled causes, and in any other suit or proceeding in which the same or similar issues are involved.

(Signed) LOUIS PAYNE.

Subscribed and sworn to before me this 29th day of November, A. D. 1918.

[Notarial Seal]

FLOYD R. OLMSTED,  
Notary Public in and for County of Kalamazoo, State  
of Michigan.

Notary Public, Kalamazoo County.

My commission expires Sept. 13, 1922.

Received copy of the within affidavit this 17th day  
of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [181]

In the District Court of the United States for the  
Northern District of California.

DUNKLEY COMPANY,  
against

Plaintiffs,

CENTRAL CALIFORNIA CANNERIES  
et al., Defendants.

### Affidavit of Daniel P. Robinson.

Daniel P. Robinson, being duly sworn, deposes and says that he is a resident of the City of Baltimore, State of Maryland; that he is factory manager of the Continental Can Company; that during the year 1904, and prior thereto, he was connected with the Experimental Department of the American Can Company, and that in such capacity, he had occasion to visit the South Haven plant of the Dunkley factory, in Michigan, at frequent intervals.

That in the late spring or early summer of 1904, affiant saw at the Dunkley factory at South Haven, a brush peach peeling machine, which at that time was not yet ready for operation; that this machine had three carrier belts, and three sets of longitudinal roller brushes, and was called a three-line machine; that shortly thereafter, in June, 1904, affiant went to the Hawaiian Islands and remained away for ten weeks, and that he returned during the autumn of 1904, and during October, 1904, saw the last above

mentioned peach peeling machine in operation at the Dunkley factory; and,

That it was commonly known at said factory that this machine was then in commercial use for the first time, that is to say, it was first used during the peach season of 1904, and affiant states that the peach season was unusually late that year, and [182] that snow had fallen before the season ended.

That said machine so operated for the first time in said factory was known as the "Prevaricator", and was a 3-line machine, which had a big tank set up high and a chain flight that carried the peaches up through a lye bath, and then to a conveyor that carried them on through the further processes.

That this machine was commonly known and referred to by the Dunkley employees at that time as the "Prevaricator", and that it was commonly known that this was the first complete prevaricator, to wit, rotary three-brush peeling machine with lye tank attached, that was ever set up or operated at the Dunkley factory at South Haven; and that affiant saw this complete machine in operation at the Dunkley factory at South Haven, in the autumn of 1904.

That before this "Prevaricator" was installed, the long hand-peeling table which had previously been in use, was cut about in half during the previous winter, either late in 1903 or early in 1904, and that half of this table was installed on one side of the room and the other half left on the other side of the room; that affiant is unable to recall the points of the compass with reference to said room, but that said long

hand-peeling table before it was cut in half was on the side of the room paralleling the railroad tracks which ran along the side of the building, and that the "Prevaricator" or three-line rotary brush machine with lye tank attached was installed on the side of the room paralleling the railroad tracks, near the remaining half of the hand-peeling table, with two machines known as the "Campbell Pitters", between the end of the hand-peeling table and the delivery end of the rotary brush machine, so as to make a direct line of operation for the peaches from the lye tank into the rotary brush machine, and thence to the "Campbell Pitters" and thus to the hand-peeling table, which was transformed into an inspection and trimming table, and then to the filling table, and thence to the syruper; and [183]

That five or six pitting machines of a different type called the Kalamazoo Pitters, were installed on the one side of the room so as to make another direct line of operation consisting of these Kalamazoo Pitters from which the peaches went to the other half of the hand-peeling table, which had also been transformed into an inspection and filling table.

That said three-line commercial brush machine had a wooden frame.

That the following year, to wit, in 1905, the Dunkley Company caused a new type of brush machine to be constructed with an iron frame, and only two carrier belts with only two sets of rotary brushes, and that one of these iron frame machines was sold or shipped to the California Fruit Cannery Association, to its plant at Chico, California, and affiant saw

said iron frame machine at said Chico plant during said year of 1905.

That affiant has examined Patent Appeal Docket No. 790 of the Court of Appeals, District of Columbia, being the record in an appeal from the Commissioner of Patents in Interference No. 30,610, entitled Samuel J. Dunkley, Appellant, vs. Hermanus A. Beekhuis, and affiant has particularly examined photographs appearing on pages 476, 477 and 478, and which are designated thereon respectively as "Dunkley's Exhibit No. 2, Photograph 1 of Second Machine," "Dunkley's Exhibit No. 2, Photograph 2 of Second Machine," and "Dunkley's Exhibit No. 2, Photograph 3 of Second Machine"; on said pages of said record; that said photographs are true and correct photographs of the brush portion of S. J. Dunkley's peach peeling machine, to wit, the machine which affiant saw set up in the late spring or early summer of 1904, but not ready for operation, as hereinabove set forth; and which said machine affiant saw in operation later in the autumn of 1904 toward the end of the peach peeling season [184] of that year;

That affiant is ready and willing to testify to the truth of the foregoing facts as they have been herein stated by him whenever called upon so to do in the above-entitled case; or otherwise.

DANIEL P. ROBINSON.

State of Maryland,  
City of Baltimore.

Subscribed and sworn to before me this 13th day of  
February, A. D. 1919.

[Notarial Seal]      NETTIE R. COHEN,  
Notary Public in and for the City of Baltimore, State  
of Maryland.

My commission expires May 1, 1920.

Attached hereto are exhibits "A", "B," and "C".

[Endorsed]: Filed Feb. 24, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [185]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,  
vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,  
vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.



IN EQUITY—No. 205.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY,      Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,                  Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.



IN EQUITY—No. 212.

DUNKLEY COMPANY, Plaintiff,

vs.

SUNLIT FRUIT COMPANY, Defendant.

**Affidavit of William C. Spencer.**

State of Michigan,

County of Van Buren,—ss.

William C. Spencer, being first duly sworn, [186] deposes and says that he is now and for many years last past has been a resident of the City of South Haven, State of Michigan; that he is employed by the South Haven Chemical Company as a salesman and bookkeeper.

That during the peach season of 1904, affiant was employed by Dunkley Company to buy peaches; that during the time of said employment affiant saw Dunkley Company's first commercial peach peeling machine in operation in its factory at South Haven; that S. J. Dunkley informed affiant at said time that said machine and lye process employed was something new, which had just been put in that year; that in the year 1909 and after said Dunkley Company had gone into bankruptcy, affiant was employed by S. J. Dunkley to go through the factory building each day for purposes required by insurance policies, and that while so doing affiant examined the office in said factory and its contents and there were no books of account, records or other books there; that said Dunkley Company went into bankruptcy in the year 1908, and thereafter the factory of Dunkley

Company was never operated, and that the same was destroyed by fire in the year 1912.

That affiant gave testimony in the case of Dunkley Company et al. vs. Pasadena Canning Company et al., Equity C-8, in the United States District Court, Southern District of California, Southern Division, and affiant refers to the official transcript of said testimony and hereby makes the same a part hereof as if fully set forth herein; that affiant is willing to testify in accordance with this affidavit and the testimony given in said case, in any or all of the above-entitled causes, and in any other suit or proceeding in which the same or simi- [187] lar issues are involved.

(Signed) WILLIAM C. SPENCER.

Subscribed and sworn to before me this 30th day of November, A. D. 1918.

[Notarial Seal]

(Signed) ROY S. McCRIMMON,  
Notary Public in and for County of Van Buren, State  
of Michigan.

My commission expires Sept. 22, 1919.

Received copy of the within affidavit this 17th day  
of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [188]

In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,

vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY, Plaintiff,

vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY, Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY, Plaintiff,

vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY, Plaintiff,

vs.

J. F. PYLE & SON, INC., Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY, Plaintiff,

vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY, Plaintiff,

vs.

SUNLIT FRUIT COMPANY, Defendant.

**Affidavit of Mrs. Mary J. Stafford.**

State of Michigan,

County of Van Buren,—ss.

Mrs. Mary J. Stafford, being first duly [189] sworn, deposes and says that she has resided in the City of South Haven since 1903; that she worked at the Dunkley South Haven factory in the peach season of 1903, and at no other time; that she fixes the date by the time at which she moved to South Haven from the country, which was in April, 1903,

and from her picture in a photograph of the interior of the Dunkley factory taken during the peach season of that year.

That affiant was employed, peeling peaches by hand during the peach season of 1903 and worked at the long peach peeling table, a photograph of which is contained in the record of the Pasadena Canning Company case as defendant's Exhibit 3 and 3a, said photograph showing affiant seated at said table.

That all of the peaches peeled during the season of 1903 were peeled by hand or by little hand machines; that she pitted no lye peeled peaches and saw none pitted by anyone else during said season of 1903; that no peaches were peeled by the lye process commercially during that season, and there was no lye peach peeling machine in operation on the main floor of the building, or elsewhere, to her knowledge; that had peaches been peeled in any quantity commercially during the peach season of 1903, affiant would have known of it.

That affiant gave testimony in the case of Dunkley Company et al. vs. Pasadena Canning Company et al., Equity C-8, in the United States District Court, Southern District of California, Southern Division, and affiant refers to the official transcript of said testimony and hereby makes the same a part [190] hereof as if fully set forth herein; that affiant is willing to testify in accordance with this affidavit and the testimony given in said case, in any or all of the above-entitled causes, and in any other suit or proceeding in which the same or similar issues are involved.

(Signed) MRS. MARY J. STAFFORD.

Subscribed and sworn to before me this 30th day  
of November, A. D. 1918.

[Notarial Seal]

(Signed) ROY S. McCRIMMON,  
Notary Public in and for County of Van Buren, State  
of Michigan.

My commission expires Sept. 22, 1919.

Received copy of the within affidavit this 17th day  
of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [191]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY,      Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.                      Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.



IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,

vs.

SUNLIT FRUIT COMPANY,      Defendant.

**Affidavit of Fred Stebler.**

State of California,  
County of Riverside,—ss.

Fred Stebler, being first duly sworn, deposes and says:

That he resides at Riverside, in the State of California, and is engaged in the business of manufacturing fruit machinery, having been engaged in that business for the past 19 years.

That in the year 1902 he visited the cannery of the California Fruit Canners' Association, at Fresno, California. That on said visit to said cannery in the year 1902, affiant saw in use an apparatus or machine for the purpose of peeling peaches; that said machine is what is known as the Baker-Chalker Orange Washer; [192] that said machine was equipped with cylinder brushes rotating in a frame about 6 feet long, with a traveling belt or conveyor between the brushes. Over the brushes were arranged perforated water pipes from which jets or sprays of water under pressure descended upon the brushes. That peaches were carried on the traveling belt or conveyor between the brushes, and by means of the brushes and sprays of water from the pipes arranged above, the peeling was removed from the peaches. That affiant recalls that the principal means of re-

moving the peeling from said peaches was the jets or sprays of water from the perforated pipes. That affiant has often observed Baker-Chalker machines in use for washing oranges at numerous canneries in the State of California, and affiant observed that in said machine so used at Fresno more water was used than is ordinarily used when washing oranges with said machine.

That affiant purchased the patent under which the Baker-Chalker Orange Washer is manufactured some time in 1905 or 1906, and is familiar with said patent. Attached hereto and marked Exhibit "A" is a photograph of one of said machines.

That affiant fixes the date of his said visit to Fresno as the year 1902 by means of certain correspondence dated in 1902.

That affiant is not interest or involved in any of the litigation affecting the Dunkley patent in suit in the above-entitled causes.

That affiant gave testimony in the case of Dunkley Company et al. vs. Pasadena Canning Company et al. before the United States District Court of the Southern District of California, Southern Division, and refers to the official transcript of his evidence in said cause, and makes the same a part hereof as though fully set forth at length. That affiant is ready and willing to testify to the foregoing facts and in accordance with his testimony in said causes in the above-entitled causes or any of them. [193]

(Signed) FRED STEBLER.

Subscribed and sworn to before me this 15 day of February, 1919.

[Seal] (Signed) L. P. SINNIS,  
Notary Public in and for the County of Riverside,  
State of California.

(Photographic Exhibit "A" attached hereto.)

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [194]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,  
vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY,      Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,              Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,

vs.

SUNLIT FRUIT COMPANY,              Defendant.

**Affidavit of Harrie E. Stewart.**

State of California,  
County of Alameda,—ss.

Harrie E. Stewart, being first duly sworn, deposes and [195] says:

That he is now and for a number of years last past has been a resident of the County of Los Angeles, State of California, and is employed by the Malcolm McLaren Investigating Bureau, of Los Angeles, California.

That affiant was engaged by the defendants in the above-entitled causes to attend the trial of the case of Dunkley Company vs. California Packing Corporation in the United States District Court in and for the Southern District of New York, in October, 1918, and to make investigation for the purpose of ascertaining any new evidence adduced in that case which might be pertinent to the issues herein; that during said trial there were installed in the factory of the American Can Company on Long Island certain machine exhibits for the purpose of demonstrating to the Court their mode of operation; that among said machine exhibits was a Baker-Chalker-Ferguson Washer, a photograph of which is hereto attached marked Exhibit "A", and hereby made a part hereof; that on October 28th, 1918, the day previous to the

demonstration made in the course of said trial, a number of tests of said machine were made at said factory in the presence of affiant, E. S. Frey, W. R. McRae, Kemper B. Campbell, and others; that above the conveyor belt between the two cylindrical brushes was a perforated water pipe for the delivery of water upon fruit; that several lots of fruit were put through the machine at that time, in some instances the water being turned on and being directed upon the fruit from said perforated pipe, and in other instances the water being turned off, the brushes, however, being saturated with water from previous operations; that in the tests wherein the water was directed upon the fruit from the perforated pipe as aforesaid the peaches came out of the machine perfectly peeled; that in the tests wherein the water was turned off from said perforated pipe as aforesaid the disintegrated peeling was only in part removed [196] from the peaches and the peaches were discharged from the machine with a considerable portion of the disintegrated peeling remaining thereon and in a condition entirely unfit for canning.

HARRIE E. STEWART.

Subscribed and sworn to before me this 23d day of February, 1919.

[Seal]

G. L. RANKIN,

Notary Public in and for the County of Alameda,  
State of California.

Attached hereto is Exhibit "A".

[Endorsed]: Filed Feb. 24, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [197]

In the Southern District of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,

vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY, Plaintiff,

vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY, Defendant.



IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,              Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY,      Defendant.

**Affidavit of William Triece.**

[198]

State of Michigan,  
County of Van Buren,—ss.

William Triece, being first duly sworn, deposes and says: That he is now and for 38 years last past has been a resident of the City of South Haven, State of Michigan; that his vocation is that of sailor and that he is licensed as a first-class pilot; that his first employment with Dunkley Company was that of install-

ing electric lights over the long hand-peeling table about August 20, 1903, said date being fixed by entries in affiant's account-book made at the time; that affiant was employed during the peach season of 1903 repairing Sinclair-Scott hand-peeling machines; that affiant saw the experimental model peach-peeling machine, the original of which was introduced in the case of Dunkley Company et al. vs. Pasadena Canning Company et al., Equity C-8 in the United States District Court of the Southern District of California, Southern Division, as "Defendant's Exhibit 11", in the basement of the Dunkley factory during the season of 1903, and late in October of the same year he saw Stewart Campbell operating the same by hand in the presence of Mr. C. D. Crary; that there were no peaches peeled by lye commercially at the Dunkley factory during the season of 1903; that all of the peaches canned during that season were peeled by hand and with hand machines by women who sat at said long hand peach peeling table; that said long hand peach peeling table was about 150 ft. in length and was built and installed early in the month of August, 1903; that after the season of 1903 affiant worked for Dunkley Company at South Haven from the month of April, 1904, until the spring of 1905.

That he helped to install the first commercial lye peeling machine consisting of lye tank and brush machine, and [199] also helped install the Campbell pitters. That the long hand peeling table was prior to the peach season of 1904 cut into two parts, one being placed on the north side and one on the south side of the main factory-room; that during the

season of 1904 affiant had charge of and operated said first commercial lye peach-peeling machine; that said first commercial lye peach-peeling machine consisted of a brush machine having three conveyors and three sets of cylindrical rotating brushes, and a tank about 40 inches wide and 12 feet long, and from 16 to 18 inches deep, made of quarter-inch iron, said tank having a circular offset across the bottom of said tank near one end thereof; that no other lye peeling machine was used in said Dunkley factory during the 1904 season, nor did affiant see any other machine at said factory up to the time he ceased his employment in the spring of 1905; that there was no other lye tank at said factory in 1904 than the one above described, which was constructed early the same year; that affiant has seen the photographs as represented on pages 1123, 1124 and 1125 of "Plaintiff's Exhibit A" in said case of Dunkley Company et al. vs. Pasadena Canning Company et al., entitled "Dunkley's Exhibit No. 2, Photograph 1 of Second Machine", "Dunkley's Exhibit No. 2, Photograph 2 of Second Machine" and "Dunkley's Exhibit No. 2, Photograph 3 of Second Machine", respectively, copies of which said photographs are hereto annexed and marked respectively Exhibits "A", "B" and "C" hereof.

And affiant has also seen pages 476, 477 and 478 of a copy of Patent Appeal Docket 790 (Interference No. 30,610), said pages containing photographs entitled respectively "Dunkley's Exhibit No. 2, Photograph 1 of Second Machine", "Dunkley's Exhibit No. 2, Photograph 2 of Second Machine" and "Dunkley's Exhibit No. 2, Photograph 3 of Second Ma-

chine"; that all of said photographs are photographs of said first commer- [200] cial machine which affiant assisted Stewart Campbell to install, and which this affiant, during the season of 1904, was in charge of and personally operated; that at the time affiant assisted in said instalment and at the time that he took charge of the operation of said machine said machine and every part thereof was new and had never been used before.

That affiant was a witness in said case of Dunkley Company et al. vs. Pasadena Canning Company et al., and testified therein; and affiant hereby refers to the transcript of his testimony of record in that case, and hereby makes said transcript a part of this affidavit as if fully set forth herein; that affiant will testify in the above-entitled causes, or any of them, or in any other suit or proceeding involving the validity of letters patent 1,104,175 to the facts as set forth in this affidavit.

(Signed) WILLIAM TRIECE.

Subscribed and sworn to before me this 30th day of November, A. D. 1918.

[Notarial Seal]

(Signed) ROY S. McCRIMMON,  
Notary Public in and for the County of Van Buren,  
State of Michigan.

My commission expires Sept. 22, 1919.

Attached hereto are exhibits "A", "B" and "C".

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [201]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
Company, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,  
vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,  
vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY, Plaintiff,  
vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY, Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,              Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY, a Corporation,  
Defendant.

[202]

**Affidavit of Abe Vanderbrook.**

State of Ohio,  
County of Wood,—ss.

Abe Vanderbrook, being first duly sworn, deposes and says: That he lives at Perrysburg, Ohio, and is employed by the American National Company in the paint business; that he was employed off and on by the Dunkley Company from the year 1895 to the



spring of 1905; that the peach season of 1904 was the last full season during which affiant was employed by said Dunkley Company in its factory at South Haven; that during the 1903 and 1904 peach seasons affiant's duties were to receive, weigh and grade the fruit.

That affiant knows Nate Simpson, who testified in the Pasadena Canning Company case in behalf of plaintiff that he (Simpson) had charge of the receiving of fruit during the season of 1903; that said testimony of said Simpson is untrue, the fact being that affiant had entire charge of the receiving of fruit during that season, and said Simpson had nothing whatever to do with it; that the place where the fruit was received was on the porch immediately adjoining the main operating room of the factory and about 25 or 30 feet from the long hand peach peeling table, which was installed immediately prior to the opening of the 1903 peach season; that in pursuance of his duties he had frequent occasion to go inside of the factory where the peaches were being peeled and otherwise prepared for canning; that there was no commercial lye peeling machine operated in said factory during the peach season of 1903; that all of the peaches canned during that season were peeled by women by hand, or by the small Sinclair-Scott hand peeling machines; that during the peach season of 1904 a lye peeling machine, and one only, was first used commercially in the South Haven factory of Dunkley Company. [203]

That affiant gave testimony in the case of Dunkley Company et al. vs. Pasadena Canning Company et al.



Equity C-8, in the United States District Court, Southern District of California, Southern Division, and affiant refers to the official transcript of said testimony and hereby makes the same a part hereof as if fully set forth herein; that affiant is willing to testify in accordance with this affidavit, in any or all of the above entitled causes and in any other suit or proceeding in which the same or similar issues are involved.

(Signed) ABE VANDER BROOK.

Subscribed and sworn to before me this 29th day of November, A. D. 1918.

[Notarial Seal]

(Signed) FREEMAN E. BOWERS,  
Notary Public in and for said County of Wood, State of Ohio.

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [204]

In the Southern Division of the United States District  
Court for the Northern District of California,  
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IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,  
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GRIFFIN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,  
vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY, Plaintiff,  
vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY, Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY, Plaintiff,

vs.

GOLDEN GATE PACKING COMPANY, ..

Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY, Plaintiff,

vs.

J. F. PYLE & SON, INC., Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY, Plaintiff,

vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY, Plaintiff,

vs.

SUNLIT FRUIT COMPANY, Defendant.

**Affidavit of S. Van Ostrand.**

State of Michigan,

County of Van Buren,—ss.

S. Van Ostrand, being first duly sworn, under oath deposes and says: That for many years he was engaged in business as a druggist in the City of South Haven, Michigan, and was also secretary and treasurer of the Gas Manufacturing System which supplies South Haven with gas for light and fuel; that he was also owner of a peach orchard in the vicinity

of South Haven, and as such was deeply interested in the development of the peach growing and canning industry; that affiant has known S. J. Dunkley for about 20 years, during all of which time he has been upon terms of intimacy with him; [205] that during the year 1903 affiant informed said Dunkley that a man by the name of F. I. Parks, living near South Haven, had peeled peaches by lye as early as 1869 or 1870 and thereafter; and affiant described to said Dunkley the method employed by said Parks in disintegrating the skins of the peaches by submerging them in hot lye and the removal of the disintegrated skins by rinsing the peaches in cold water; that affiant during the year 1903 had a number of conversations with S. J. Dunkley concerning the peeling of peaches with lye; that during the year 1903 Dunkley inquired of affiant whether affiant had any catalog of cylindrical brushes, said Dunkley informing affiant that he (Dunkley) wanted to get some cylindrical brushes to be used in the building of a machine to peel peaches; that during the month of October, 1903, said Dunkley purchased from affiant two small quantities of lye, to wit: on October 4, 1903, one-half pound of by-carbonate of potash, price 25 cents, and on October 24, 4½ pounds of crude potash, price 50 cents; that affiant's books of account contain entries which show these purchases and said books were produced and exhibited by affiant in court in the trial of the case of Dunkley Company et al. vs. Pasadena Canning Company et al. (Equity C-8, Southern District of California) and said entries were read into the record of said action; that affiant has also his books

of account for 1902, the same containing accounts with said Dunkley Company covering transactions during the year 1902; that said 1902 accounts do not show any purchases of lye; affiant offers to produce his said books of account herein; that affiant was so interested in the idea of peeling peaches with a machine that he went to the Dunkley factory on the 20th day of October, 1903, and saw the first experimental machine in the basement set up, without a lye tank, and that upon that occasion affiant visited the peeling department of the factory to see whether the lye process of the lye peach peeling machinery was in commercial operation, [206] and that affiant found that no lye peeling machine was installed or at all in the main floor or in operation at that time, but on the contrary all peaches were being peeled by hand; that affiant fixes the date of his said visit to the Dunkley factory by an entry in affiant's memorandum-book referring to a transaction occurring upon the same day as affiant's visit to said factory.

That affiant gave testimony in the case of Dunkley Company et al. vs. Pasadena Canning Company et al. Equity C-8, in the United States District Court, Southern District of California, Southern Division, and affiant refers to the official transcript of said testimony and hereby makes the same a part hereof as if fully set for herein; that affiant is willing to testify in accordance with this affidavit, in any or all of the above-entitled causes and in any other suit or proceeding in which the same or similar issues are involved.

That by reason of an injury to affiant's right arm, he

is unable to sign his name to this affidavit, but affixes his signature thereto by his mark duly witnessed.

(Signed) S. ( His ) VAN OSTRAND.

( x )

(mark)

Witnesses as to mark:

WILLIAM C. SPENCER.

MRS. C. S. HALL.

Subscribed and sworn to before me this 5 day of Feb., 1919.

[Notarial Seal]

RAY S. McCRIMMON,

Notary Public in and for the County of Van Buren,  
State of Michigan.

My commission expires Sept. 22, 1919.

Received copy of the within affidavit this 17th day  
of February, 1919.

FRED L. CHAPPELL and

W. A. RICHARDSON,

Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [207]

In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

IN EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff,

vs.

GRIFFEN & SKELLEY COMPANY,  
Defendant.

IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,

vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY, Plaintiff,

vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY, Defendant.



IN EQUITY—No. 209.

DUNKLEY COMPANY, Plaintiff,

vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY, Plaintiff,

vs.

J. F. PYLE & SON, INC., Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY, Plaintiff,

vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY, Plaintiff,

vs.

SUNLIT FRUIT COMPANY, Defendant.

**Affidavit of Mrs. Frank Webb.**

State of Michigan.

County of *Saginaw*,—ss.

Mrs. Frank Webb, being first duly sworn, [208]  
deposes and says that she is a resident of South Haven  
and has lived there since the year 1899; that she was  
employed at the Dunkley factory at South Haven  
during the peach season of 1903 only; that she fixes  
this date by reference to the pay roll of William  
McEwing, and also by a photograph of the long

peeling table, in which affiant and Mrs. Weed are shown seated together, said photograph having been taken in the year 1903.

That affiant was employed peeling peaches by hand at the long hand peeling table at the Dunkley factory during the season of 1903; that she pitted no lye peeled peaches and saw none pitted by anyone else during said season of 1903; that affiant is positive that there was no lye peach peeling machine in commercial operation in the Dunkley factory during the peach season of 1903; that during the peach season of 1903 all peaches were peeled by hand and by hand machines, and there were no peaches peeled by the lye process or by a peach peeling machine;

That affiant gave testimony in the case of Dunkley Company et al. vs. Pasadena Canning Company et al. Equity C-8, in the United States District Court, Southern District of California, Southern Division, and affiant refers to the official transcript of said testimony and hereby makes the same a part hereof as if fully set forth herein; that affiant is willing to testify in accordance with this affidavit and the testimony given in said case, in any or all of the above-entitled causes, and in any other suit or proceeding in which the same or similar issues are involved.

(Signed) MRS. FRANK WEBB.

Subscribed and sworn to before me this 2d day of December, A. D. 1918.

[Notarial Seal]

(Signed) J. O. NEWBERRY,  
Notary Public in and for County of *Saginaw*, State  
of Michigan.

Com. expires Dec. 27, 1919. [209]

Received copy of the within affidavit this 17th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [210]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
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IN EQUITY—No. 201.

DUNKLEY COMPANY, a Corporation,  
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IN EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff,

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J. C. AINSLEY PACKING COMPANY,  
Defendant.

IN EQUITY—No. 206.

DUNKLEY COMPANY,                      Plaintiff,  
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ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY,  
Defendant.

IN EQUITY—No. 209.

DUNKLEY COMPANY,                      Plaintiff,  
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GOLDEN GATE PACKING COMPANY,  
Defendant.

IN EQUITY—No. 210.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

J. F. PYLE & SON, INC.,              Defendant.

IN EQUITY—No. 211.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

IN EQUITY—No. 212.

DUNKLEY COMPANY,                      Plaintiff,  
vs.

SUNLIT FRUIT COMPANY,      Defendant.

**Affidavit of Mrs. Nellie Weed.**

State of Michigan,  
County of *Van Buren*,—ss.

Mrs. Nellie Wood, being first duly sworn [211]

deposes and says that she has lived at South Haven for about twenty years, and that she was employed at the Dunkley factory during the peach season of 1903 only; that she fixes said date from the pay rolls of William McEwing, at whose factory she worked one half day during that season, and by other circumstances including a photograph of herself which appears in a picture of a portion of the interior of the Dunkley factory, taken in the peach season of 1903.

That affiant was employed peeling peaches by hand at the long hand peeling table at the Dunkley factory during the season of 1903; that she pitted no lye peeled peaches and saw none pitted by anyone else during said season of 1903; that affiant is positive that there was no lye peach peeling machine in commercial operation in the Dunkley factory during the peach season of 1903.

That affiant gave testimony in the case of Dunkley Company et al. vs. Pasadena Canning Company et al., Equity C-8, in the United States District Court, Southern District of California, Southern Division, and affiant refers to the official transcript of said testimony and hereby makes the same a part hereof as if fully set forth herein; that affiant is willing to testify in accordance with this affidavit and the testimony given in said case, in any or all of the above entitled causes, and in any other suit or proceeding in which the same or similar issues are involved.

(Signed) MRS. NELLIE WEED.



**Affidavit of William K. White.**

State of California,

City and County of San Francisco,—ss.

William K. White, being first duly sworn, deposes and says:

I was one of the solicitors for the above named defendants in the above-entitled suit and as such had charge of the preparation of said causes for trial on behalf of the defendants. The defense of said causes was carefully and diligently prepared and diligent investigation made to ascertain the state of the prior art. I caused a search to be made in the United States Patent Office by C. A. Mason, of Washington, D. C., to ascertain what prior patents had been issued with reference to the subject matter of the patent in suit and analogous [214] subjects. Said search and other searches, made by other parties at my request were diligently and thoroughly made and included a search of prior publications and foreign patents. I made numerous inquiries and investigations throughout the United States and caused numerous inquiries and investigations to be made by the officers and employees of the defendants herein.

Despite the exercise of the utmost diligence, at the time of the trial of the above-entitled causes before this Honorable Court, I did not know that a machine had ever been used by McDermett nor did counsel associated with me in the defense of said suits or the officers of the defendant corporations have knowledge of such a machine. Prior to the filing of the answers therein, my attention was directed to United States



Letters Patent No. 511,709 issued on December 26, 1893, to Ida L. McDermett, of Baird, Texas, for a process for "Preparing Fruit For Canning and Preserving," although this patent discloses a *process* and contains no intimation that any *machine* had been used by the patentee in practicing such process. I thought it barely possible that such a machine had been built and used by the patentee, and therefore, out of abundance of caution and with a desire to exercise the utmost diligence in ascertaining the state of the prior art, I mailed a letter to the patentee, Ida L. McDermett, at the address given in the patent, to wit: Baird, County of Callahan, State of Texas, and in this letter, which was mailed on or about August 25, 1915, I inquired whether or not any apparatus had been constructed for the purpose of carrying out the process described in the patent; a carbon copy of said letter is annexed hereto and made a part hereof; the original letter, with the envelope containing the same, unopened, was returned to me by the United States postal authorities; on the envelope was stamped an official notice to the effect that the party to whom the letter was addressed, could not be located; as I am unable to locate such original letter, I [215] presume that the same was destroyed by me at the time of the receipt thereof; as I had no knowledge or intimation that any such machine, had been, *in fact*, constructed or used by the patentee McDermett, in practicing said process, I was of the opinion that I was not justified in putting my clients to the expense of making any investigation in Texas for the purpose of locating the patentee or ascertaining if,

*in fact*, such a machine had been used; I have since been informed the said patentee died prior to the mailing of my said letter.

I did not know of the publication of Archdeacon's Kitchen Cabinet at the time of the trial of said causes nor did counsel associated with me, or the officers of the defendant corporations know of said publication nor did I know of the existence of the same until the trial of the case of Dunkley Company vs. Pasadena Canning Company, in the year 1918.

Prior to the trial of said suits, I studied and was thoroughly familiar with the testimony given on behalf of the patentee Dunkley in the interference declared by the Patent Office between the then pending application of Dunkley and Patent Number 864,944 issued on September 3, 1907, to H. A. Beekhuis, upon the latter's application filed on May 25, 1904;

In my study of the record in said interference proceeding, I observed that:

a. In 1910, the patentee, Dunkley, testified his first machine, embodying *the only invention* involved in said interference, to wit: means for removing the *previously* disintegrated skin from the fruit, and consisting of means for supporting and advancing the fruit and means for directing peeling jets of water upon the fruit, was built in July 1903, and that said first machine, was a *model, one line machine*. (The questions and answers showing such testimony are herewith annexed and marked Exhibit "B" and by this reference made a part of this affidavit.)

b. In 1910, the patentee's son, Melville Dunkley, testified [216] that said first machine was built in the summer of 1903.

(The questions and answers showing such testimony are herewith annexed and marked Exhibit "C" and by this reference, made a part of this affidavit).

c. In 1910, Dunkley's witness, Verhage, testified that the *wooden frame* of said first machine was made in July 1903, and the machine *first set up* by himself and *Stewart Campbell* in the basement of the north wing of the Dunkley cannery in South Haven. (The questions and answers showing such testimony are hereto annexed and marked Exhibit "D", and by this reference made a part of this affidavit.)

d. That no witness, in said interference, even remotely intimated that said first machine, a model machine, was made prior to July 1903 and that neither of the Dunkleys, although called on to *give the full history* of the Dunkley invention, even remotely suggested, intimated or hinted that *any part* of said model machine was made prior to July, 1903.

e. That in his verified preliminary statements filed by him in said interference, the patentee Dunkley swore he conceived his invention in August 1902; in September, 1902, made a drawing disclosing the same and that the invention was first embodied in a complete working structure during July, 1903. (An excerpt is hereto annexed marked Exhibit "E" and by this reference made a part of this affidavit showing said statement of said Dunkley.)

Also, prior to the trial of said suits, I interviewed Stewart Campbell, William Brunker and Mapes, witnesses thereafter called on behalf of the defendants herein; their statements to me *corroborated* the 1910 interference testimony given on behalf of Dunkley

and to the effect that Dunkley's first *model, one-line* machine was built in 1903, at a time when Brunker worked for the Dunkley Company in South Haven, *he never having* [217] *worked for the Dunkley Company at any other time other than during the period commencing in June 1903 and ending about November 1903*; the statements of Campbell, Brunker and Mapes, and Mapes's account book, showed, however, that said model machine was not completed until some time in October 1903;

The statements of Campbell and my own personal investigations, made for the purpose of checking up such statements, disclosed to me the names of the various firms from whom the material for Dunkley's first two machines, the model, *one-line* machine, and the *three-line* machine, was bought:

Also, prior to the trial of the said suits, I was familiar with the proofs which could be produced and showing that G. E. Grier of Pasadena, had conceived his anticipating invention at a date as early as the conception date claimed by Dunkley in said interference; and that two anticipating full-sized commercial machines had been commenced by Grier in April 1903, completed in July, 1903 and one of them put into public use during that month and the other put into public use as early as August 3, 1903.

The application for the Dunkley patent in suit having been filed on November 29, 1904, and I, being familiar with the rule of law requiring the patentee Dunkley to anticipate any anticipation of his patent by clear, unequivocal and convincing proofs, felt absolutely certain that Dunkley could not anticipate

Grier's dates and be adjudged the prior inventor, even though he was able to establish the dates relied on by him in said interference proceeding and prove that his first model machine was built in *July 1903, as testified to in such interference.*

Hearing from Campbell that he built Dunkley's first two machines, the *one-line model*, and the *three-line commercial machine* and also learning from Campbell the names of the various concerns from whom Dunkley Company bought the material and parts for said two machines, I felt certain the [218] Dunkleys, in their efforts to anticipate Grier's dates and contradict Campbell, would not dare testify any one, other than Campbell, built said machines, because such testimony could be too easily checked up and contradicted by the party named by them and, further that they would not dare to name the concerns from whom the material and parts of said machines were bought, because such testimony could likewise be too easily checked up.

By reason of the foregoing situation, I assumed that *merely the oral testimony* of three witnesses, each of them highly interested, given on the behalf of the Dunkley Company, and uncorroborated by documentary proofs and directly contradicted by three disinterested witnesses and the account book of one of them, could not be held sufficient, under the authorities, to sustain the burden of proof placed on plaintiff and requiring it to establish, by clear and convincing proofs, the date of Dunkley's invention as prior to Grier's dates.

Furthermore, I did not anticipate that the Dunkleys



would change their 1910 testimony and swear that the model machine was made in 1902 instead of *in July 1903*, as testified to by them and their witnesses in the interference.

I could not in the very nature of things, anticipate any such change in their 1910 testimony, and especially could I not do so, in view of the fact that, as late as 1915, in the suit of Dunkley Company vs. California Canneries Company, then pending in this court, the patentee Dunkley would not and did not testify he had built or used any such model machine in 1902. I heard him give his said testimony in 1915 and heard him questioned on this very point by this Honorable Court. (The testimony of said Dunkley is hereto annexed and marked Exhibit "F" and by this reference made a part of this affidavit.)

In view of the foregoing situation, I believed it safe for defendants to rely on the testimony of Campbell, Brunner and [219] Mapes, the 1910 contradictory testimony of the two Dunkleys and plaintiff's refusal to produce any documentary evidence, which, on its face, would prove anything material or relevant, and, therefore, did not think it necessary for defendants to ask for a continuance in order to produce additional witnesses when, *much to the surprise of defendants and their solicitors*, the two Dunkleys gave testimony herein so inconsistent with their 1910 and 1915 testimony and which 1910 and 1915 testimony, in my opinion, was insufficient to sustain plaintiff's contention that Dunkley and not Grier was the prior inventor.

That at the time of the trial of the above entitled causes I had no knowledge of newspaper articles pub-

lished in the Daily Tribune of South Haven, Michigan, on October 1, 1903, and in The Tribune Messenger, of South Haven, Michigan, on April 22, 1904, relating to the Dunkley factory of South Haven, Michigan, nor did counsel associated with me in the trial of the above-entitled causes, nor did defendants in the above-entitled causes, know of said newspaper articles.

That at the time of the trial of the above-entitled causes I had no knowledge of or information concerning the correspondence between S. J. Dunkley and the Messrs. Norton, relating to the Dunkley factory, which correspondence was produced by the Dunkley Company at the trial of Dunkley Company et al. vs. the Pasadena Canning Company et al, before the United States District Court, Southern District of California, Southern Division, nor did counsel associated with me in the trial of the above-entitled causes, nor did defendants in the above-entitled causes, know of said correspondence.

That at the time of the trial of the above-entitled causes I did not know of the use by David W. Hobson of his machine, consisting of an adaptation of the Anderson Prune Dipper, such use commencing in 1891, nor did counsel associated with me in the [220] trial of the above-entitled causes, nor did defendants in the above-entitled causes, know of said use.

That I did not present evidence of this use by J. F. Pyle and Son, a defense pleaded in the answer in the above-entitled causes, for the reason that I felt that it was unnecessary, and inadvisable, to unduly involve the case by multiplying defenses similar in their



nature. That I had investigated the defense of prior invention of the Grier machine (Defendants' Exhibit K) and had found that the invention of said machine by Grier could be conclusively established as of August, 1902, and the making of two large commercial machines proved by documentary evidence as having been made in April-July, 1903, and put into commercial operation on or prior to July 30, 1903, and I relied upon the sworn testimony of the Dunkleys that their first model machine was not built until July 15, 1903, and their first commercial machine not until a considerable period of time later, and I therefore relied upon the Grier defense as being absolutely sufficient, particularly in view of other available testimony to the effect that the Dunkleys' first experimental machine was not, in fact, completed until late in October, 1903.

In the interest of justice and uniformity of decision in this circuit, I respectfully submit that these suits should be re-opened in order that defendants may produce, as witnesses herein, the large number of witnesses who testified in the suit of plaintiff vs. Pasadena Canning Company et al, and whose testimony convinced His Honor, Judge Trippet, that Dunkley's model machine was not made in 1902 but in 1903 subsequent to the construction and public use of the Grier machines; it is to be noted that the testimony of these numerous witnesses corroborates the Dunkley 1910 interference testimony to the effect that his first machine was made in 1903, whereas it conclusively [221] shows the Dunkley 1916 changed testimony herein is untrue.

WILLIAM K. WHITE.

Subscribed and sworn to before me this 18th day of February, 1919.

[Seal]                GENEVIEVE S. DONELIN,  
Notary Public in and for the City and County of San  
Francisco, State of California.

Received copy of the within affidavit this 18th day of February, 1919.

FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 18, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [222]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201—Companion Cases 202, 205,  
206, 209, 210, 211 and 212.

DUNKLEY COMPANY, a Corporation,  
Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES COM-  
PANY, a Corporation; GRIFFIN & SKEL-  
LEY COMPANY, J. C. AINSLEY PACK-  
ING COMPANY, ANDERSON - BARN-  
GROVER MANUFACTURING COM-  
PANY, GOLDEN GATE PACKING COM-  
PANY, J. F. PYLE & SON, INCORPO-

RATED, HUNT BROTHERS COMPANY,  
and SUNLIT FRUIT COMPANY, a Corpora-  
tion,

Defendants.

CHAPPELL & EARL, of Kalamzoo, Michigan, and  
W. A. RICHARDSON, of San Francisco, Cali-  
fornia, Attorneys for Plaintiff.

KEMPER B. CAMPBELL, FRANCIS J. HE-  
NEY, FREDERICK S. LYON, and WIL-  
LIAM J. CARR, all of Los Angeles, California,  
Attorneys for Defendants.

**Motion to Reopen Decrees in Equity.**

VAN FLEET, District Judge:

The above-entitled cause and the seven similar causes by the same plaintiff, numbered in the margin, all involving the validity of the same letters patent, were heretofore tried together in this court in April, 1916, and on December 4, 1916, in accordance with an oral opinion by the Court, an interlocutory decree was entered in each holding the patent valid and infringed and ordering an accounting; these decrees were thereafter in due [223] course in all respects affirmed by the Circuit Court of Appeals (Central California Canneries Company vs. Dunkley, 247 Fed. 790) and its mandate of affirmance filed in this court on May 22, 1918; thereafter on October 14, 1918, after the coming down of the remittiturs, the present motion was interposed by the defendants asking that this court request of the Circuit Court of Appeals the withdrawal of its mandate of affirmance therein and

that the causes be thereupon remitted to this Court with authority to set aside its decrees and all other proceedings therein, to re-open the same and permit the defendants to reform and amend their pleadings and thereupon to re-hear said causes for the purpose of receiving certain alleged to be newly discovered, additional and further evidence bearing on the validity of the patent involved and its infringement by the several defendants and upon such hearing to enter new and different decrees should the evidence warrant.

The grounds of the motion are, in substance, that subsequent to the entry here of said decrees in a suit on the same patent by this plaintiff and its assignee against another alleged infringer, (*Dunkley Company et al. vs. Pasadena Canning Company*, 261 Fed. 203), tried before Judge Trippet in the District Court for the Southern District of this State wherein certain further and additional evidence was produced and heard which it is alleged could not with reasonable diligence be earlier discovered and was for that reason not available on the trial of these causes, the latter court rendered its decree on September 4, 1918, holding the patent void and dismissing the bill, which decree has thus resulted in a conflict of decision as to the validity of the patent and it is said will work confusion and result in hardship to the defendants; and it is claimed that the newly discovered evidence is of a character [224] which would render it probable that on another hearing the patent would be held void by this court. There is a further and distinct ground that at the date of the hearing in this court the plaintiff herein had parted with all its interest in the sub-

ject matter of the suit by assigning its title in the patent pending the hearing to another corporation, and for that reason it is claimed the decrees are void and should be set aside.

The motion was based upon affidavits as to diligence in discovering and the character of the newly discovered evidence largely as disclosed in the record in the cause heard in the Southern District and other evidence and documents to be produced at the hearing of the motion; and falling within the latter category there was produced and relied on at the presentation the record of the evidence, proceedings and decree in another and later suit brought by the assignee of the plaintiff, and decided by Judge Hand (A. N.) in the Southern District of New York, subsequent to the filing of this motion but before it was heard, in which the same patent was involved and wherein the decree, based substantively upon the same evidence as that produced before Judge Trippet, was again in favor of the defendant (*Dunkley Co., vs. Cal. Packing Corporation*, — Fed. —).

While as noted the motion was entered here in October, 1918, its hearing was at the suggestion of the Court postponed until the determination of the appeal then pending in the Circuit Court of Appeals, in the suit heard before Judge Trippet, in anticipation that the decision in the latter might facilitate a solution of the questions involved in the motion—and which as we shall see has contributed to that effect; that decision having been rendered (*Dunkley Co. vs. Pasadena Canning Co.*, 261 Fed. 386), the motion has after some considerable delay been argued and sub-



mitted. Since the submission an appeal in the suit in the New York case has been [225] heard and decided (*Dunkley vs. California Packing Corporation*, — Fed. — ).

Motions of similar import are not without precedent in patent cases but they are unusual, and the practice not uniform, and this fact doubtless led to some confusion in the minds of defendants' counsel as to where the jurisdiction rested. It appears that defendants first presented a motion to accomplish the same purpose and upon the same showing, to the Circuit Court of Appeals in these cases after its denial of a re-hearing but before the remittitur had been sent down; but that court peremptorily denied the defendants' motion, without opinion, and by an order which is wholly silent as to defendants having leave to apply to this court for such relief. This action is now made the basis of an objection by plaintiff that the defendants are precluded from renewing the present motion here and that this court is concluded by the ruling of the Circuit Court of Appeals from granting the relief asked.

I was disposed at the argument to regard the objection rather lightly but a more mature consideration of the authorities discloses that the question is not free from difficulty. That defendants in applying to this Court are now pursuing the more usual and proper course in such instances is, I think, fairly to be gathered from the cases on the subject; and had that course been taken in the first instance the present objection could not have arisen. *Barber vs. Otis Motor Sales Co.*, 245 Fed. 945; *Sundh Electric Co. v. Cutler-*

Hammer Mfg. Co., 244 Fed. 163; Wilson vs. Union Tool Co., 265 Fed. 669. But this fact does not aid us. The defendants saw fit to first make the application to the Circuit Court of Appeals while the controversy was yet in its hands and it ruled upon it. That that Court had jurisdiction in a proper case to grant the relief no question is or could well be made. In *re Potts*, 166 U. S. 263; *Dunn Wire-Cut Lug Brick Co. vs. Toronto Fire Clay Co.*, 259 Fed. 258. In the latter case the Circuit Court of Appeals of the Sixth Circuit, after rendering its decree, granted a similar application authorizing the [226] lower court to re-open the cause without requiring a request from the latter. In the present case the court of appeals took cognizance of the motion and ruled on it, and apparently upon its merits—at least there is nothing to indicate a more limited view—but it denied the relief, not merely without prejudice to an application here, but unconditionally and finally, and we must therefore assume that it so ruled because the application did not appeal to it as having merit. Of course it is hardly necessary to suggest that where a question in a cause has been ruled by the higher court it becomes as to the court below the law of the case and the latter may not competently proceed in contravention of it. As stated in *In re Potts*, *supra*, where the lower court had taken a course not in pursuance of the mandate of the higher court:

“When the merits of a case have been once decided by this court on appeal, the Circuit Court has no authority, without express leave of this court, to grant a new trial, a rehearing or a review, or to permit new defenses on the merits to



be introduced by amendment of the answer. Citing cases.) In this respect, a motion for a new trial or a petition for a rehearing stands upon the same ground as a bill of review, as to which Mr. Justice Nelson, speaking for this court, in *Southard v. Russell*, above cited, said: 'Nor will a bill of review lie in the case of newly discovered evidence after the publication, or decree below, where a decision has taken place on an appeal, unless the right is reserved in the decree of the appellate court, or permission be given on an application to that court directly for the purpose. This appears to be the practice of the Court of Chancery and House of Lords, in England; and we think it founded in principles essential to the proper administration of the law, and to a reasonable termination of litigation between the parties in chancery suits.' " [227]

But defendants contend that they are not asking here the same relief they asked of the court of appeals; that what they are asking this court to do in no way runs counter to the ruling of the higher court; that what they asked there was for a direct order from that court re-opening the decrees whereas all they ask this court to do is to *request the privilege* of taking that action. The answer of the plaintiff is that this is merely seeking the same relief by going the other way about—"Whipping the devil around the stump," as it were; and I am inclined to take that view.

But however the objection should be decided, is, in the view I take of the merits, of little moment in the present case. I say this for the reason that, after a

very careful review of the voluminous record, I find myself able to take no more favorable view of this application than that indicated by the court of appeals; and there can be no transgression or disparagement of the ruling of the latter court by looking into the record for the purpose of stating my reasons for that conclusion.

The controversy involves the validity of United States letters patent No. 1,104,175 issued to one Sam'l J. Dunkley on July 21, 1914, for a peach-peeling device for use in fruit canning, a full and luminous description of which will be found in the opinion of the Circuit Court of Appeals above noted, upholding the validity of the patent.

The conception at once took rank as of great value in the fruit canning industry, one of great magnitude in this State, and, as is not unusual in such circumstances it has almost from the date of the application been beset by bitter and stubborn litigation instigated by adverse claimants against both branches of the application;—it having been divided in the Patent Office to cover both the device patent here involved and a process patent. [228] The application was filed November 29, 1904, and before the patents thereunder were issued, there had been interposed two interference proceedings and one so-called "public use proceeding," all emanating from the same source which had to run their course through the Patent Office and the Courts of the District of Columbia, before patents were finally secured. (*Dunkley vs. Beekhus*, 39 App. D. C. 494; *Monte vs. Dunkley*, 46 App. D. C. 70; *United States, ex rel. Dunkley vs. Ewing*,

Comm. Pats., 203 O. G. 603.) And since the issuance of this device patent there has been a cloud of infringers, necessitating a large number of infringement suits, the first of which to come to trial being those in this District resulting in the decrees here involved. In view of the history of the litigation in the Patent Office it was not surprising that when those suits came on for hearing it should be found that both parties were thoroughly prepared, the knowledge gained in the interference and other proceedings having made them entirely familiar with the questions they had to meet and the evidence required; and the cases gave indication of every effort having been put forth by both parties to meet those issues with every item of evidence that could be secured, and indeed that the cases had in all respects been thoroughly prepared, through able counsel, for a determined fight. As a result the questions involved were very ably presented and no stone left unturned by either side. The whole controversy was made to turn on the same question substantially as that involved in the interference proceedings of anticipation or prior conception, there being no claim of non-infringement and the validity of the patent as involving invention being conceded. As a result of such hearings these decrees were entered; and as noted the decrees were after a full and painstaking consideration of the challenged sufficiency of the evidence fully sustained by the Circuit Court of Appeals in an elaborate opinion meeting every objection urged. [229]

It is obvious that, with this prolonged history of bitter controversy over the fundamental question of

priority which underlies these adjudications and where three several tribunals have, after the most mature consideration, successively reached the same conclusion, this court should not, without the most impelling reasons set these decrees aside and open up the whole controversy anew. As I stated to counsel at the argument I should not entertain the idea of opening up these decrees unless the showing satisfied me that the interests of justice demanded it in obedience to an unescapable conviction that a re-hearing would probably change the result. The showing has fallen far short of disclosing such a situation but, to the contrary, leaves me quite satisfied with the propriety of those decrees. I have taken pains, with the aid of a very complete index memorandum furnished by counsel, not only to carefully review the evidence introduced before me but everything additional found in the records in both *Dunkley vs. Pasadena Canning Company* and *Dunkley vs. California Packing Corporation*; presented for the first time before Judge Trippet in the former case and later to Judge Hand in the latter; and in my consideration of the evidence I have had the benefit of the views and comments found in the opinions of both my learned brothers, which led them to an opposite conclusion with myself as to the validity of the patent, yet nevertheless, I am constrained to say, that with the highest consideration for the learning and ability of both, I am impressed with neither the character of the new evidence nor with the conclusions reached in those cases. That there was a cloud of "new" witnesses it is quite true giving indication that the country had been raked with a fine-

toothed comb so to speak; but there was little new evidence given by them—if the term be used to express the idea of material evidence. In fact, there is none aside from one or two items of so-called documentary proof which does not fall strictly within the characterization of the Supreme Court as being wholly insufficient in character as a basis to set aside or defeat an existing patent. In the very recent case of *Symington Co. vs. National Malleable Castings Co. et al.*, 250 U. S. 383, 386, that Court took occasion to say: "This court has pointed out that oral testimony tending to show prior invention as against existing letters patent is, in the absence of models, drawings or kindred evidence, open to grave suspicion; particularly if the testimony be taken after the lapse of years from the time of the alleged invention. *Deering v. Winona Harvester Works*, 155 U. S. 286, 300." There is a striking absence of anything in the nature of models, drawings or memoranda produced to support the mere oral statement of these witnesses made in nearly every instance purely from memory, and this after a lapse of from fifteen to eighteen years; and as to the items of book entry and correspondence they were not only wholly inconclusive in their character but made as strongly in support of the plaintiff's theory as to the date the invention was put in practice as that of the defendants'. Indeed I regard the item referred to as the "Norton letters", to which much significance is attached, as making, in their sequence, when properly construed, entirely in favor of the plaintiff.

And singularly enough while the motion is based



entirely on the newly discovered evidence as produced in the hearings before Judge Trippet and Judge Hand, neither of those learned gentlemen seem to have relied on it as the fundamental basis of his conclusion in determining the validity of the patent, but they both resort to evidence that had found a place in the controversy from the beginning.

For instance, Judge Trippet, after noting two or three items of book entry, in themselves of no definitive value, and referring [231] to the Norton letters, contents himself by saying: "There is other documentary evidence such as the books of the Clark Engine & Boiler Company, which throw more or less light upon the controversy." But without specifying anything further he proceeds to discuss the evidence of the witness Stewart L. Campbell, the defendants' chief witness produced before this Court on the subject as to when the first device of the Dunkley invention was constructed; and Judge Trippet shows quite clearly that it is largely upon the evidence of this witness that he bases his conclusion that plaintiff's patent had been anticipated. This witness had testified before this Court that he himself was the one who conceived the Dunkley invention and constructed the first experimental device in 1903; and that it was not built in 1902 as testified by Dunkley. Of this testimony I had occasion to say in my opinion: "The main reliance by defendant in the evidence is upon the testimony of the witness Campbell \* \* \*. I indicated at the trial, and my mind has been only confirmed in that view by my review of the evidence, that I could not extend the limits of my credulity sufficiently to put



credence in the testimony of Campbell." When the cases got to the Circuit Court of Appeals the appellants disclaimed relying on Campbell's testimony that he was the inventor of the peach-peeling device but offered it only to negative Dunkley being the inventor. This attitude occasioned the Circuit Court of Appeals to say in its opinion:

"There is in the record the testimony of one Stewart L. Campbell, who was called as a witness by the defendants in surrebuttal, and who testified that he was employed by the Dunkley Company in constructing machinery from the first of 1902 to December, 1904. According to the testimony of this witness he designed and built, in August, 1903, a peach-peeling table, for which the plaintiff obtained the patent in suit, and this he did without any ideas from Dunkley as to its construction. In other [232] words, his testimony is to the effect that he was the designer of the invention for which Dunkley received a patent. But defendants insist that the testimony of this witness was not introduced to prove that fact, and they refer to their answer as showing that it was not so pleaded as a defense. The purpose of this testimony, they say, was to discredit the claim of Dunkley that he was the inventor, and not to offer the defense that Campbell was the inventor. But the testimony of Campbell upon that question was material and relevant to the issue before the court, and was either true or not true. If true, Dunkley was not the inventor of the device claimed as his inven-

tion, and that would end the case. If Campbell's testimony was not true, he was testifying falsely concerning a material and relevant matter, and his testimony would for that reason be wholly rejected. *'Falsus in uno, falsus in omnibus.'*

"But the defendants say they offer it only to prove that Dunkley was not the inventor. They stand on the priorities set up in their answer as defenses, namely, the priority of the Vernon patent for a process for peeling fruit and the Grier device for an apparatus used in conducting that process. They deny the priority of the Dunkley peach-peeling machine, and offer the testimony of Campbell to prove that fact. This they cannot do. They cannot offer this testimony as true to prove a material and relevant fact for one purpose, and discredit it for another purpose. If it is true for one purpose, it is true for any purpose. And as the defendants have refused to commend the testimony of this witness to the court as true for a purpose to which it was relevant and material, we must reject it for the purpose for which it was offered, namely, to fix the date of the Dunkley constructed machine in 1903, instead of 1902."

Campbell's testimony was not materially different before Judge Trippet but the latter does not advert to the aspect above discussed by the Circuit Court of Appeals, merely closing his consideration of the witness' evidence by saying: "There is no reason [233] in any event for discrediting Campbell." I have carefully reviewed the particulars of the evidence as to which Judge Trippet seems to think it tends to cor-

roborate Campbell but I am wholly unable to change my former conclusion as to his evidence.

Basing his conclusion largely on the evidence of this witness Judge Trippet found the Dunkley patent anticipated and for that reason void. He also found that the device, claimed in that case to be an infringement, did not infringe the Dunkley invention; and it is significant that it was only on this latter ground that the Circuit Court of Appeals affirmed his decree dismissing the bill.

As to Judge Hand's opinion it is devoted largely to a question not here involved—whether defendants were protected by a license set up in defense; and on the question of anticipation he indulges, with a single exception to be noticed, in little original discussion, contenting himself with following and adopting the views of Judge Trippet. He starts out by saying: "After hearing the testimony, I was very clear that the complainant had not a valid patent, and that the decision of Judge Trippet was correct." And referring to Judge Trippet's views on anticipation he says, "Judge Trippet has discussed his testimony carefully and has reached the conclusion that Stewart's testimony that he made the first machine in 1903 is correct." This reference is to Campbell's testimony, the learned Judge inadvertently calling him Stewart—his first name. He then proceeds to some independent discussion and says: "In the various alleged anticipating devices *which were exhibited to me* the one which impressed me most was the Baker-Chalker machine.  
\* \* \* The Baker-Chalker machine was not before Judge Van Fleet, and if it had been, supple-

mented by the additional testimony that was before Judge Trippet, I believe he would have had no doubt that a valid prior use was established. \* \* \*

The identity of function between the Baker-Chalker machine *exhibited to me* and that of Dunkley is convincing evidence that the latter contributed nothing to the art which can be regarded [234] as amounting to invention." (Italics volunteered.)

In these extracts Judge Hand has inadvertently fallen into a singular error or misapprehension arising perhaps from the evidence before him having been largely stipulated into the case from the record before Judge Trippet and not heard orally. In the first place there was not before Judge Hand one of the Baker-Chalker machines as relied upon by defendants to anticipate plaintiff's device. What was before Judge Hand was a copy of the old original Baker-Chalker orange-washing device, remodeled or adapted *from memory* by Baker, one of the patentees, to represent that device as the witness testified to seeing it used experimentally in Fresno in 1902 for peeling peaches; and it had been admitted before Judge Trippet solely for illustrative purposes as representing, as nearly as the witness' memory could make it, the device as it was used in Fresno. It found its way before Judge Hand from being stipulated into the record and was only there for the same purposes as used before Judge Trippet. In the next place all of the evidence as to this device, with a single exception, that was before Judge Trippet was before me in the present cases, including that of Baker. The exception was the evidence of one Stebler—referred to by

Judge Hand as Stebley—who saw the device used on one occasion in Fresno in 1902 or 1903 and, testifying purely from memory, said: “Well I observed that it was a new application of the machine [Baker-Chalker] which I had not seen before, and it was being used as I say in which to remove the peel from peaches preparatory to canning and it was done in conjunction with—by using water in conjunction with the brushes.” It will be observed that the witness says nothing about *how* the water was being used and consequently his evidence was entirely valueless as showing anticipation of plaintiff’s patented device, even if otherwise competent. But in fact, under the principles of the Symington case, neither the evidence of Baker nor that of Stebler was competent to anticipate plaintiff’s patent.

Of this Baker-Chalker device I had occasion to say in my oral opinion: “As to the Vernon device, it had been in use in Fresno as early as 1902 or 1903. I am unable to hold that this device was an anticipation in its essential characteristics. It operated upon a fundamentally different principle. That was an adaptation to the purposes for which the plaintiff’s device was used, that of peeling peaches, of a device by Baker and another for scouring oranges for the market; it had a system of revolving brushes, and it used a saturation or douche of water for the purpose of softening the brushes and of washing the fruit; but the essential operative principle there was the brushes. They were for the purpose of scrubbing and washing the hard outer surface of the skin of the orange and of freeing it from mould and other detrimental sub-



stances which interfered with its marketability, and the essential principle was the operation of the brushes. The water was used, as I have suggested, only for a saturating and washing purpose. I may say, furthermore, that the patent itself did not call for the essential feature which I find characterizes the plaintiff's device, that is, of peeling jets of water, or water admitted at such a high pressure upon the fruit as to act itself as the primary means of washing the skin from the fruit; nor do I think that the manner in which the Vernon patent was used was such as to suggest readily to the mind the idea that peeling jets of water would be efficient for the purpose for which the plaintiff's device was intended. The plaintiff's device operates upon quite a different principle. It has the rotating brushes, but has these peeling jets of water, which are themselves the efficient means of washing off the disintegrated skin of the peach after it has been put through the lye process, and the brushes serve the subsidiary purpose of agitating the fruit and of turning it for the purpose of presenting its different surfaces to the jets of water to enable them to do the efficient work of cleansing the skin after its [236] disintegration by the lye bath; and I am therefore unable to hold that the Vernon device, which was subsequently patented—I think in 1905—can be regarded as an anticipation of the device or the conception embodied in the plaintiff's patent."

I may add that I have found nothing in the record, either new or old, tending in any way to change my views as there expressed.

As a result of his conclusions Judge Hand found the patent void for anticipation but he also found that



the defendants held a valid license to use plaintiff's device and for that reason was not infringing. It was upon this latter ground alone that the Circuit Court of Appeals of the Second Circuit affirmed his decree, leaving the question of the validity of the patent untouched. As a result their decree, like that of the Circuit Court of Appeals of this Circuit, lends no aid to defendants on the present motion.

In what has been said above of the adverse conclusions reached by my brother judges I need hardly say that nothing is intended in a spirit of criticism, my sole purpose being to show that the case is not one where I am called upon to accept their conclusions as making in support of the present motion.

In view of the considerations suggested, to grant defendants' motion would, as it seems to me, do violence to a cardinal rule for the guidance of courts, that when parties have had full opportunity to be heard there should be a period to litigation. And in the practical administration of the law a party has had full opportunity to be heard when he has been afforded a fair and reasonable opportunity.

As to the last ground of defendants' motion, that the decrees should be vacated for want of proper parties, it is antagonized by a counter motion by plaintiff to add as plaintiff in the several actions the name of the corporation to whom the present plaintiff's rights have been assigned pending the controversy. Leave to apply to this Court for that privilege was heretofore granted by the Circuit Court of Appeals and, as the right is one which does not inhere in the merits of the controversy but is purely model and

formal that there may be [237] proper parties to sustain a final decree, the plaintiff's motion should be granted.

Accordingly the defendants' motion that this court ask leave to reopen the decrees is denied; that of plaintiff to add the new party is granted.

[Endorsed]: Filed August 22, 1921. Walter B. Maling, Clerk. [238]

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At a stated term, to wit, the July term, A. D. 1921, of the Southern Division of the United States District Court for the Northern District of California, Second Division, held at the courtroom, in the City and County of San Francisco, on Monday, the 22d day of August, in the year of our Lord one thousand nine hundred and twenty-one. Present, The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 211—Equity.

DUNKLEY COMPANY

vs.

HUNT BROTHERS COMPANY.

**Minutes of Court—August 22, 1921—Order Denying Motion to Reopen Decree and Granting Motion to Add New Party Plaintiff.**

Defendant's motion to reopen the decree and plaintiff's motion to add new party plaintiff heretofore heard and submitted, being now fully considered, and the Court having filed its written opinion, it is ordered

that said motion to reopen the decree be and the same is hereby denied and that the motion to add new party plaintiff be and the same is hereby granted.  
[239]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Southern Division.

IN EQUITY —No. 201.

“DUNKLEY COMPANY” (Now Known as Michi-  
gan Canning & Machinery Company) and  
DUNKLEY COMPANY,

Plaintiffs,

vs.

CENTRAL CALIFORNIA CANNERIES COM-  
PANY,

Defendant.

**Order Allowing Appeal.**

Upon the filing of the petition for order allowing appeal, and the filing of the assignments of error accompanying the same, on motion of Frederick S. Lyon, Esq., attorney for the defendant, it is ordered that an appeal be and the same is hereby allowed the defendant, in the above-entitled suit to the United States Circuit Court of Appeals for the Ninth Circuit from the order made, filed and entered herein on August 22d, 1921, allowing and granting plaintiff's motion that Dunkley Company be made or added as a party plaintiff herein; and that a transcript of the record, testimony, exhibits and all proceedings and

papers upon which said order was made, be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, upon defendant giving a bond in the sum of Two Hundred Fifty (\$250.00) Dollars, with good and sufficient surety to be approved by the court, conditioned [240] that defendant shall answer all costs which may be adjudged against it if it fails to make good its said appeal.

Dated, San Francisco, California, September 20th, 1921.

WM. C. VAN FLEET,  
Judge. [241]

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In the Southern Division of the United States District Court for the Northern District of California, Second Division.

IN EQUITY—No. 201.

“DUNKLEY COMPANY” (Now Known as the Michigan Canning & Machinery Company) and DUNKLEY COMPANY,

Plaintiffs,

vs.

CENTRAL CALIFORNIA CANNERIES COMPANY,

Defendant.

**Petition for Order Allowing Appeal.**

The Central California Canneries Company, defendant in the above-entitled suit, conceiving itself aggrieved by the interlocutory order or decree made, filed and entered in the above-entitled suit of August

22d, 1921, granting the motion of the plaintiff that Dunkley Company be added as a party plaintiff in said suit, to the end that the injunction heretofore ordered in said suit be continued in force and effect and defendant enjoined as in and by said injunction set forth, and the opposition and objections of defendant to such motion and to the continuing in effect of such injunction and defendant's motion to vacate and set aside the interlocutory decree and injunction was and were overruled and denied, comes now, by Francis J. Heney, Kemper B. Campbell, William J. Carr and Frederick S. Lyon, its attorneys, and petitions this Court for an order allowing it, Central California Canneries Company, an appeal from said order to the Honorable the United States Circuit Court of Appeals for the Ninth Circuit, under and pursuant to the laws in that behalf made and provided; and that a transcript of the record, testimony, exhibits and all proceedings and papers upon which said order was made, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit; also that an order be made fixing the amount of security which defendant shall give and [242] that an order be made fixing the amount of security which defendant shall give and furnish to cover any and all costs which may be adjudged against it by reason of such appeal in the event such appeal is not sustained.

And now at the time of filing and presenting this petition for order allowing said appeal defendant presents and files its Assignments of Errors setting up separately and particularly each error asserted and intended to be urged in the United States Circuit

Court of Appeals for the Ninth Circuit, and your petitioner will ever pray, etc.

CENTRAL CALIFORNIA CANNERIES  
COMPANY,

By FRANCIS J. HENEY,  
KEMPER B. CAMPBELL,  
WILLIAM J. CARR,  
FREDERICK S. LYON,

Its Attorneys. [243]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 201.

“DUNKLEY COMPANY” (Now Known as Michi-  
gan Canning & Machinery Company) and  
DUNKLEY COMPANY,

Plaintiffs,

vs.

CENTRAL CALIFORNIA CANNERIES COM-  
PANY,

Defendant.

**Assignments of Error.**

Comes now defendant above named and specifies and assigns the following as the errors upon which it will rely upon its appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the order of this Court made, filed and entered herein on August 22d, 1921, granting the motion of plaintiff



to make or add as a party plaintiff Dunkley Company and continue the injunction heretofore ordered, granted and issued in force and effect and overruling and denying defendant's motion to set aside and vacate the Interlocutory Decree and the injunction herein:

That said District Court of the United States, aforesaid, in making, filing and entering said order, erred as follows:

I. In granting plaintiff's said motion.

II. In denying defendant's said motion.

III. In not holding and ordering that by reason of the original plaintiff herein, Dunkley Company (now known as Michigan Canning & Machinery Company), having assigned all right, title and interest in and to the patent in suit and in the matters in suit prior to the decision of this suit by said District Court, and prior to the entry of said Interlocutory Decree, the said decision, and the said Interlocutory Decree, and all proceedings subsequent to such assignment [244] were and are void, nugatory and of no effect.

IV. In not holding, ordering and decreeing that by reason of the said assignment and transfer of the exclusive right, title and interest in and to the patent in suit prior to the decision of this suit by this Court and prior to the entry of the said Interlocutory Decree herein this suit abated and that said Interlocutory Decree was nugatory and void and must be set aside and vacated, and the cause set down for trial and determination on proofs to be offered upon behalf of the parties.

V. In not vacating and setting aside said Inter-

locutory Decree and said Injunction for the reason that there is now a misjoinder of parties plaintiff.

VI. In not vacating and setting aside said Interlocutory Decree and said injunction for the reason that at the time of the entry and granting thereof there was no party plaintiff in this cause before the court having any right, title or interest in or entitled to such Interlocutory Decree or to said injunction.

VII. In granting plaintiff's said motion and giving full force and effect to the said Interlocutory Decree and to the said injunction, without giving defendant a right to a trial and a right to offer and prove its defence.

VIII. In not vacating and setting aside the Interlocutory Decree and injunction herein as nugatory and void and placing this suit for hearing and trial upon its merits upon proper pleadings and proofs between and on behalf of the Dunkley Company, as assignee of the original plaintiff, and this defendant.

In order that the foregoing assignments of error may be and appear of record, defendant presents the same to the Court and prays that such disposition may be made thereof as is in accordance with the laws of the United States. [245]

WHEREFORE, the said defendant prays that the said order of this Court, and the said Interlocutory Decree and the said injunction, and each thereof, be reversed, vacated and set aside, and that this Court be ordered and directed to so vacate and set aside the same and each thereof.

All of which is respectfully submitted,

FRANCIS J. HENEY,  
KEMPER B. CAMPBELL,  
WILLIAM J. CARR,  
FREDERICK S. LYON,  
Attorneys for Defendant.

[Endorsed]: Filed Sept. 21, 1921. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [246]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Southern Division.

IN EQUITY—No. 202.

“DUNKLEY COMPANY” (Now Known as Michi-  
gan Canning & Machinery Company) and  
DUNKLEY COMPANY,

Plaintiffs,

vs.

GRIFFIN & SKELLEY COMPANY,

Defendant.

**Order Allowing Appeal.**

Upon the filing of the petition for order allowing appeal, and the filing of the assignments of error accompanying the same, on motion of Frederick S. Lyon, Esq., attorney for defendant, it is ordered that an appeal be and the same is hereby allowed the defendant, in the above-entitled suit to the United States Circuit Court of Appeals for the Ninth Circuit from the order made, filed and entered herein

on August 22d, 1921, allowing and granting plaintiff's motion that Dunkley Company be made or added as a party plaintiff herein a transcript of the record, testimony, exhibits and all proceedings and papers upon which said order was made, be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit upon defendant giving a bond in the sum of \$250.00 with good and sufficient surety to be approved by the court conditioned that defendant shall answer all costs which may be adjudged against it if it fails to make good its said appeal.

Dated, San Francisco, California, September 20, 1921.

WM. C. VAN FLEET,  
Judge. [247]

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In the Southern Division of the United States District Court for the Northern District of California, Second Division.

IN EQUITY—No. 202.

“DUNKLEY COMPANY” (Now Known as Michigan Canning & Machinery Company) and  
DUNKLEY COMPANY,

Plaintiffs,

vs.

GRIFFIN & SKELLEY COMPANY,

Defendant.

**Petition for Order Allowing Appeal.**

The Griffin & Skelley Company, defendant in the

above-entitled suit, conceiving itself aggrieved by the interlocutory order or decree made, filed and entered in the above-entitled suit on August 22d, 1921, granting the motion of the plaintiff that Dunkley Company be added as a party plaintiff in said suit, to the end that the injunction heretofore ordered in said suit be continued in force and effect and defendant enjoined as in and by said injunction set forth, and the opposition and objections of defendant to such motion and to the continuing in effect of such injunction and defendant's motion to vacate and set aside the interlocutory decree and injunction was and were overruled and denied, comes now, by Francis J. Heney, Kemper B. Campbell, William J. Carr and Frederick S. Lyon, its attorneys, and petitions this Court for an order allowing it, Griffin & Skelley Company, an appeal from said order to the Honorable the United States Circuit Court of Appeals for the Ninth Circuit, under and pursuant to the laws in that behalf made and provided; and that a transcript of the record, testimony, exhibits, and all proceedings and papers upon which said order was made, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit; also that an [248] order be made fixing the amount of security which defendant shall give and furnish to cover any and all costs which may be adjudged against it by reason of such appeal in the event such appeal is not sustained.

And now at the time of filing and presenting this petition for order allowing said appeal defendant presents and files its Assignments of Error setting up separately and particularly each error asserted and

intended to be urged in the United States Circuit Court of Appeals for the Ninth Circuit, and your petitioner will every pray, etc.

GRIFFIN & SKELLEY COMPANY,

By FRANCIS J. HENEY,

KEMPER B. CAMPBELL,

WILLIAM J. CARR,

FREDERICK S. LYON,

Its Attorneys. [249]

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In the Southern Division of the United States District Court for the Northern District of California, Second Division.

IN EQUITY—No. 202.

“DUNKLEY COMPANY” (Now Known as Michigan Canning & Machinery Company) and  
DUNKLEY COMPANY,

Plaintiffs,

vs.

GRIFFIN & SKELLEY COMPANY,

Defendant.

**Assignments of Error.**

Comes now defendant above named and specifies and assigns the following as the errors upon which it will rely upon its appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the order of this Court made, filed and entered herein on August 22d, 1921, granting the motion of plaintiff to make or add as a party plaintiff Dunkley Company and continue the injunction heretofore ordered,



granted and issued in force and effect and overruling and denying defendant's motion to set aside and vacate the Interlocutory Decree and the injunction herein:

That said District Court of the United States, afore-said, in making, filing and entering said order, erred as follows:

I. In granting plaintiff's said motion.

II. In denying defendant's said motion.

III. In not holding and ordering that by reason of the original plaintiff herein, Dunkley Company (now known as Michigan Canning & Machinery Company), having assigned all right, title and interest in and to the patent in suit and in the matters in suit prior to the decision of this suit by said District Court, and prior to the entry of said Interlocutory Decree, the said decision, and the said Interlocutory [250] Decree, and all proceedings subsequent to such assignment were are void, nugatory and of no effect.

IV. In not holding, ordering and decreeing that by reason of the said assignment and transfer of the exclusive right, title and interest in and to the patent in suit prior to the decision of this suit by this Court and prior to the entry of the said Interlocutory Decree herein this suit abated and that said Interlocutory Decree was nugatory and void and must be set aside and vacated, and the cause set down for trial and determination on proofs to be offered upon behalf of the parties.

V. In not vacating and setting aside said Interlocutory Decree and said Injunction for the reason that there is now a misjoinder of parties plaintiff.

VI. In not vacating and setting aside said Inter-

locutory Decree and said Injunction for the reason that at the time of the entry and granting thereof there was no party plaintiff in this cause before the court having any right, title or interest in or entitled to such Interlocutory Decree or to said injunction.

VII. In granting plaintiff's said motion and giving full force and effect to the said Interlocutory Decree and to the said Injunction, without giving defendant a right to a trial and a right to offer and prove its defense.

VIII. In not vacating and setting aside the Interlocutory Decree and Injunction herein as nugatory and void and placing this suit for hearing and trial upon its merits upon proper pleadings and proofs between and on behalf of the Dunkley Company, as assignee of the original plaintiff, and this defendant.

In order that the foregoing assignments of error may be and appear of record, defendant presents the same to the Court and prays that such disposition may be made thereof as is in [251] accordance with the laws of the United States.

WHEREFORE, the said defendant prays that the said order of this Court, and the said Interlocutory Decree and the said Injunction, and each thereof, be reversed, vacated and set aside, and that this Court be ordered and directed to so vacate and set aside the same and each thereof.

All of which is respectfully submitted.

FRANCIS J. HENEY,  
KEMPER B. CAMPBELL,  
WILLIAM J. CARR,  
FREDERICK S. LYON,  
Attorneys for Defendant.

[Endorsed]: Filed Sept. 21, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [252]

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In the Southern Division of the United States District Court for the Northern District of California, Southern Division.

IN EQUITY—No. 205.

“DUNKLEY COMPANY” (now known as Michigan Canning & Machinery Company,) and  
DUNKLEY COMPANY

Plaintiffs,

vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

**Order Allowing Appeal.**

Upon the filing of the petition for order allowing appeal, and the filing of the assignments of error accompanying the same, on motion of Frederick S. Lyon, Esq., attorney for the defendant, it is ordered that an appeal be and the same is hereby allowed the defendant, in the above entitled suit to the United States Circuit Court of Appeals for the Ninth Circuit from the order made, filed and entered herein on August 22d, 1921, allowing and granting plaintiff's motion that Dunkley Company be made or added as a party plaintiff herein; and that a transcript of the record, testimony, exhibits and all proceedings and papers upon which said order was made, be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit upon defendant

giving a bond in the sum of \$250.00 with good and sufficient surety to be approved by the Court conditioned that defendant shall answer all costs which may be adjudged against it if it fails to make good its said appeal.

Dated San Francisco, California, September 20, 1921.

WM. C. VAN FLEET,  
Judge. [253]

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In the Southern Division of the United States District Court for the Northern District of California, Second Division.

IN EQUITY—No. 205.

“DUNKLEY COMPANY” (now known as Michigan Canning & Machinery Company,) and  
DUNKLEY COMPANY,

Plaintiffs,

vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

**Petition for Order Allowing Appeal.**

The J. C. Ainsley Packing Company, defendant in the above-entitled suit, conceiving itself aggrieved by the interlocutory order or decree made, filed and entered in the above entitled suit of August 22d, 1921, granting the motion of the plaintiff that Dunkley Company be added as a party plaintiff in said suit, to the end that the injunction heretofore ordered in said suit be continued in force and effect and defendant enjoined as in and by said injunction set forth, and the

opposition and objections of defendant to such motion and to the continuing in effect of such injunction and defendant's motion to vacate and set aside the interlocutory decree and injunction was and were overruled and denied, comes now, by Francis J. Heney, Kemper B. Campbell, William J. Carr and Frederick S. Lyon, its attorneys, and petitions this Court for an order allowing it, J. C. Ainsley Packing Company, an appeal from said order to the Honorable the United States Circuit Court of Appeals for the Ninth Circuit, under and pursuant to the laws in that behalf made and provided; and that a transcript of the record, testimony, exhibits and all proceedings and papers upon which said order was made, may be sent to the United States Circuit Court of Appeals for the Ninth [254] Circuit; also that an order be made fixing the amount of security which defendant shall give and furnish to cover any and all costs which may be adjudged against it by reason of such appeal in the event such appeal is not sustained.

And now at the time of filing and presenting this petition for order allowing said appeal defendant presents and files its Assignment of Error setting up separately and particularly each error asserted and intended to be urged in the United States Circuit Court of Appeals for the Ninth Circuit, and your petitioner will ever pray, etc.

J. C. AINSLEY PACKING COMPANY,  
By FRANCIS J. HENEY,  
KEMPER B. CAMPBELL,  
WILLIAM J. CARR,  
FREDERICK S. LYON,  
Attorneys for Defendant [255]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

IN EQUITY—No. 205.

“DUNKLEY COMPANY” (now known as Michigan Canning & Machinery Company) and  
DUNKLEY COMPANY,

Plaintiffs,

v.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

### **Assignments of Error.**

Comes now defendant above named and specifies and assigns the following as the errors upon which it will rely upon its appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the order of this Court made, filed and entered herein on August 22d, 1921, granting the motion of plaintiff to make or add as a party plaintiff Dunkley Company and continue the injunction heretofore ordered, granted and issued in force and effect and overruling and denying defendant's motion to set aside and vacate the Interlocutory Decree and the Injunction herein:

That said District Court of the United States, aforesaid, in making, filing and entering said order, erred as follows:

- I. In granting plaintiff's said motion.
- II. In denying defendant's said motion.
- III. In not holding and ordering that by reason



of the original plaintiff herein, Dunkley Company (now known as Michigan Canning and Machinery Company), having assigned all right, title and interest in and to the patent in suit and in the matters in suit prior to the decision of this suit by said District Court, and prior to the entry of said Interlocutory Decree, the said decision, and the said Interlocutory Decree, and all proceedings subsequent to such assignment were and are void, nugatory and of [256] no effect.

IV. In not holding, ordering and decreeing that by reason of the said assignment and transfer of the exclusive right, title and interest in and to the patent in suit prior to the decision of this suit by this Court and prior to the entry of the said Interlocutory Decree herein this suit abated and that said Interlocutory Decree was nugatory and void and must be set aside and vacated, and the cause set down for trial and determination on proofs to be offered upon behalf of the parties.

V. In not vacating and setting aside said Interlocutory Decree and said Injunction for the reason that there is now a misjoinder of parties plaintiff.

VI. In not vacating and setting aside said Interlocutory Decree and said Injunction for the reason that at the time of the entry and granting thereof there was no party plaintiff in this cause before the court having any right, title of interest in or entitled to such Interlocutory Decree or to said Injunction.

VII. In granting plaintiff's said motion and giving full force and effect to the said Interlocutory Decree and to the said Injunction, without giving de-

fendant a right to a trial and a right to offer and prove its defense.

VIII. In not vacating and setting aside the Interlocutory Decree and Injunction herein as nugatory and void and placing this suit for hearing and trial upon its merits upon proper pleadings and proofs between and on behalf of the Dunkley Company, as assignee of the original plaintiff, and this defendant.

In order that the foregoing assignments of error may be and appear of record, defendant presents the same to the Court and prays that such disposition may be made thereof as is in accordance with the laws of the United States.

WHEREFORE the said defendant prays that the said order [257] of this court and the said Interlocutory Decree and the said Injunction, and each thereof, be reversed, vacated and set aside, and that this Court be ordered and directed to so vacate and set aside the same and each thereof.

All of which is respectfully submitted.

FRANCIS J. HENEY,  
KEMPER B. CAMPBELL,  
WILLIAM J. CARR,  
FREDERICK S. LYON,

Attorneys for Defendant.

[Endorsed]: Filed Sept. 21, 1921. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [258]

In the Southern Division of the United States District  
Court for the Northern District of California,  
Southern Division.

IN EQUITY—No. 206.

“DUNKLEY COMPANY” (now known as Michi-  
gan Canning & Machinery Company) and  
DUNKLEY COMPANY,

Plaintiffs,

vs.

ANDERSON-BARNGROVER MANUFACTUR-  
ING COMPANY,

**Order Allowing Appeal.**

Upon the filing of the petition for order allowing appeal and the filing of the assignments of error accompanying the same, on motion Frederick S. Lyon, Esq., attorney for defendant, it is ordered that an appeal be and the same is hereby allowed the defendant, in the above entitled suit to the United States Circuit Court of Appeals for the Ninth Circuit from the order made, filed and entered herein on August 22d, 1921, allowing and granting plaintiff's motion that Dunkley Company be made or added as a party plaintiff herein; and that a transcript of the record, testimony, exhibits and all proceedings and papers upon which said order was made, be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit upon defendant giving a bond in the sum of \$250.00 with good and sufficient surety to be approved by the court conditioned that defendant

shall answer all costs which may be adjudged against it if it fails to make good its said appeal.

Dated, San Francisco, California, September 20th, 1921.

WM. C. VAN FLEET,  
Judge. [259]

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In the Southern Division of the United States District Court for the Northern District of California, Second Division.

IN EQUITY—No. 206.

“DUNKLEY COMPANY” (Now known as the Michigan Canning & Machinery Company) and DUNKLEY COMPANY,

Plaintiffs,

vs.

ANDERSON-BARNGROVER MANUFACTURING COMPANY,

Defendant.

**Petition for Order Allowing Appeal.**

The Anderson-Barngrover Mfg. Company, defendant in the above-entitled suit, conceiving itself aggrieved by the interlocutory order or decree made, filed and entered in the above entitled suit of August 22d, 1921, granting the motion of the plaintiff that Dunkley Company be added as a party plaintiff in said suit, to the end that the injunction heretofore ordered in said suit be continued in force and effect and defendant enjoined as in and by said injunction set forth, and the opposition and objections of de-

defendant to such motion and to the continuing in effect of such injunction and defendant's motion to vacate and set aside the interlocutory decree and injunction was and were overruled and denied, comes now, by Francis J. Heney, Kemper B. Campbell, William J. Carr and Frederick S. Lyon, its attorneys, and petitions this Court for an order allowing it, Anderson-Barngrover Mfg. Company, an appeal from said order to the Honorable the United States Circuit Court of Appeals for the Ninth Circuit, under and pursuant to the laws in that behalf made and provided and that a transcript of the record, testimony, exhibits and all proceedings and papers upon which said order was made, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit; also that an order be made fixing the amount of [260] security which defendant shall give and furnish to cover any and all costs which may be adjudged against it by reason of such appeal in the event such appeal is not sustained.

And now at the time of filing and presenting this petition for order allowing said appeal defendant presents and files its Assignments of Error setting up separately and particularly each error asserted and intended to be urged in the United States Circuit Court of Appeals for the Ninth Circuit, and your petitioner will ever pray, etc.

ANDERSON-BARNGROVER MFG.  
COMPANY,

By FRANCIS J. HENEY,  
KEMPER B. CAMPBELL,  
WILLIAM J. CARR,  
FREDERICK S. LYON,

Its Attorneys [261]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

IN EQUITY—No. 206.

“DUNKLEY COMPANY” (Now Known as Michigan Canning & Machinery Company) and  
DUNKLEY COMPANY,

Plaintiffs,

vs.

ANDERSON-BARNGROVER MFG. COMPANY,

Defendant.

### **Assignments of Error.**

Comes now defendant above named and specifies and assigns the following as the errors upon which it will rely upon its appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the order of this Court made, filed and entered herein on August 22, 1921, granting the motion of plaintiff to make or add as a party plaintiff Dunkley Company and continue the injunction heretofore ordered, granted and issued in force and effect and overruling and denying defendant's motion to set aside and vacate the Interlocutory Decree and the injunction herein:

That said District Court of the United States, aforesaid, in making, filing and entering said order, erred as follows:

- I. In granting plaintiff's said motion.
- II. In denying defendant's said motion.



III. In not holding and ordering that by reason of the original plaintiff herein, Dunkley Company (now known as the Michigan Canning & Machinery Company), having assigned all right, title and interest in and to the patent in suit and in the matters in suit prior to the decision of this suit by said District Court, and prior to the entry of said Interlocutory Decree, the said decision, and the said Interlocutory Decree, and all proceedings subsequent to such assignment [262] were are void, nugatory and of no effect.

IV. In not holding, ordering and decreeing that by reason of the said assignment and transfer of the exclusive right, title and interest in and to the patent in suit prior to the decision of this suit by this Court and prior to the entry of the said Interlocutory Decree herein this suit abated and that said Interlocutory Decree was nugatory and void and must be set aside and vacated, and the cause set down for trial and determination on proofs to be offered upon behalf of the parties.

V. In not vacating and setting aside said Interlocutory Decree and said Injunction for the reason that there is now a misjoinder of parties plaintiff.

VI. In not vacating and setting aside said Interlocutory Decree and said Injunction for the reason that at the time of the entry and granting thereof there was no party plaintiff in this cause before the court having any right, title or interest in or entitled to such Interlocutory Decree or to said Injunction.

VII. In granting plaintiff's said motion and giving full force and effect to the said Interlocutory Decree and to the said Injunction, without giving defend-

ant a right to a trial and a right to offer and prove its defense.

VIII. In not vacating and setting aside the Interlocutory Decree and Injunction herein as nugatory and void and placing this suit for hearing and trial upon its merits upon proper pleadings and proofs between and on behalf of the Dunkley Company, as assignee of the original plaintiff, and this defendant.

In order that the foregoing assignments of error may be and appear of record, defendant presents the same to the Court and prays that such disposition may be made thereof as is in accordance with the laws of the United States.

WHEREFORE, the said defendant prays that the said [263] order of this Court, and the said Interlocutory Decree and the said Injunction, and each thereof, be reversed, vacated and set aside, and that this Court be ordered and directed to so vacate and set aside the same and each thereof.

All of which is respectfully submitted.

FRANCIS J. HENEY,  
KEMPER B. CAMPBELL,  
WILLIAM J. CARR,  
FREDERICK S. LYON,  
Attorneys for Defendant.

[Endorsed]: Filed Sept. 21, 1921. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [264]

In the Southern Division of the United States District  
Court for the Northern District of California,  
Southern Division.

IN EQUITY—No. 209.

“DUNKLEY COMPANY” (now known as Michi-  
gan Canning & Machinery Company) and  
DUNKLEY COMPANY,

Plaintiffs,

vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

**Order Allowing Appeal.**

Upon the filing of the Petition for order allowing appeal, and the filing of the assignments of error accompanying the same, on motion of Frederick S. Lyon, Esq., attorney for the defendant, it is ordered that an appeal be and the same is hereby allowed the defendant, in the above-entitled suit to the United States Circuit Court of Appeals for the Ninth Circuit from the order made, filed and entered herein on August 22, 1921, allowing and granting plaintiff's motion that Dunkley Company be made or added as a party plaintiff herein; and that a transcript of the record, testimony, exhibits and all proceedings and papers upon which said order was made, be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, upon defendant giving a bond in the sum of \$250.00, with good and sufficient surety to be approved by the Court, condi-

tioned that defendant shall answer all costs which may be adjudged against it if it fails to make good its said appeal.

Dated, San Francisco, California, September 20th, 1921.

WM. C. VAN FLEET,  
Judge. [265]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 209.

“DUNKLEY COMPANY” (now known as Michi-  
gan Canning & Machinery Company) and  
DUNKLEY COMPANY,

Plaintiffs,

vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

**Petition for Order Allowing Appeal.**

The Golden Gate Packing Company, defendant in the above-entitled suit, conceiving itself aggrieved by the interlocutory order or decree made, filed and entered in the above entitled suit on August 22d, 1921, granting the motion of the plaintiff that Dunkley Company be added as a party plaintiff in said suit, to the end that the injunction heretofore ordered in said suit be continued in force and effect and defendant enjoined as in and by said injunction set forth, and the opposition and objections of defendant to such

motions and to the continuing in effect of such injunction and defendant's motion to vacate and set aside the interlocutory decree and injunction was and were overruled and denied, comes now, by Francis J. Heney, Kemper B. Campbell, William J. Carr and Frederick S. Lyon, its attorneys, and petitions this Court for an order allowing it, the Golden Gate Packing Company, an appeal from said order to the Honorable the United States Circuit Court of Appeals for the Ninth Circuit, under and pursuant to the laws in that behalf made and provided; and that a transcript of the record testimony, exhibits and all proceedings and papers upon which said order was made, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit; also that an order be [266] made fixing the amount of security which defendant shall give and furnish to cover any and all costs which may be adjudged against it by reason of such appeal in the event such appeal is not sustained.

And now at the time of filing and presenting this petition for order allowing said appeal defendant presents and files its Assignments of Error setting up separately and particularly each error asserted and intended to be urged in the United States Circuit Court of Appeals for the Ninth Circuit, and your petitioner will ever pray, etc.

GOLDEN GATE PACKING COMPANY,

By FRANCIS J. HENEY,

KEMPER B. CAMPBELL,

WILLIAM J. CARR,

FREDERICK S. LYON. [267]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

IN EQUITY—No. 209.

“DUNKLEY COMPANY” (now known as Michigan Canning & Machinery Company) and  
DUNKLEY COMPANY,

Plaintiffs,

vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

**Assignments of Error.**

Comes now defendant above named and specifies and assigns the following as the errors upon which it will rely upon its appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the order of this Court made, filed and entered herein on August 22d, 1921, granting the motion of plaintiff to make or add as a party plaintiff Dunkley Company and continue the injunction heretofore ordered, granted and issued in force and effect and overruling and denying defendant's motion to set aside and vacate the Interlocutory Decree and the Injunction herein;

That said District Court of the United States, aforesaid, in making, filing and entering said order, erred as follows:

- I. In granting plaintiff's said motion.
- II. In denying defendant's said motion.
- III. In not holding and ordering that by reason



of the original plaintiff herein, Dunkley Company (now known as Michigan Canning & Machinery Company), having assigned all right, title and interest in and to the patent in suit and in the matters in suit prior to the decision of this suit by said District Court, and prior to the entry of said Interlocutory Decree, the said decision, and the said Interlocutory Decree, and all proceedings subsequent to such assignment were and are void, nugatory and of [268] no effect.

IV. In not holding, ordering and decreeing that by reason of the said assignment and transfer of the exclusive right, title and interest in and to the patent in suit prior to the decision of this suit by this Court and prior to the entry of the said Interlocutory Decree herein this suit abated and that said Interlocutory Decree was nugatory and void and must be set aside and vacated, and the cause set down for trial and determination on proofs to be offered upon behalf of the parties.

V. In not vacating and setting aside said Interlocutory Decree and said Injunction for the reason that there is now a misjoinder of parties plaintiff.

VI. In not vacating and setting aside said Interlocutory Decree and said Injunction for the reason that at the time of the entry and granting thereof there was no party plaintiff in this cause before the court having any right, title or interest in or entitled to such Interlocutory Decree or to said Injunction.

VII. In granting plaintiff's said motion and giving full force and effect to the said Interlocutory Decree and to the said Injunction, without giving de-

fendant a right to a trial and a right to offer and prove its defense.

VIII. In not vacating and setting aside the Interlocutory Decree and Injunction herein as nugatory and void and placing this suit for hearing and trial upon its merits upon proper pleadings and proofs between and on behalf of the Dunkley Company, as assignee of the original plaintiff, and this defendant.

In order that the foregoing assignments of error may be and appear of record, defendant presents the same to the Court and prays that such disposition may be made thereof as is in accordance with the laws of the United States.

WHEREFORE the said defendant prays that the said order [269] of this court and the said Interlocutory Decree and the said Injunction, and each thereof, be reversed, vacated and set aside, and that this Court be ordered and directed to so vacate and set aside the same and each thereof.

All of which is respectfully submitted.

FRANCIS J. HENEY,  
KEMPER B. CAMPBELL,  
WILLIAM J. CARR,  
FREDERICK S. LYON,

Attorneys for Defendant.

[Endorsed]: Filed Sept. 21, 1921. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [270]

In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 210.

“DUNKLEY COMPANY” (now known as Michi-  
gan Canning & Machinery Company) and  
DUNKLEY COMPANY,

Plaintiffs,

vs.

J. F. PYLE & SON, INC.,

Defendant.

### **Order Allowing Appeal.**

Upon the filing of the petition for order allowing appeal, and the filing of the assignments of error accompanying the same, on motion of Frederick S. Lyon, Esq., attorney for defendant, it is ordered that an appeal be and the same is hereby allowed the defendant, in the above-entitled suit to the United States Circuit Court of Appeals for the Ninth Circuit from the order made, filed and entered herein on August 22d, 1921, allowing and granting plaintiff's motion that Dunkley Company be made or added as a party plaintiff herein; and that a transcript of the record, testimony, exhibits, and all proceedings and papers upon which said order was made, be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit upon defendant giving a bond in the sum of \$250.00 with good and sufficient surety to be approved by the court conditioned that defend-

ant shall answer all costs which may be adjudged against it if it fail to make its said appeal good.

Dated, San Francisco, California, September 20, 1921.

WM. C. VAN FLEET,  
Judge. [271]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Second Division.

IN EQUITY—No. 210.

“DUNKLEY COMPANY” (now known as Michi-  
gan Canning & Machinery Company) and  
DUNKLEY COMPANY,

Plaintiffs,

vs.

J. F. PYLE & SON, INC.,

Defendant.

**Petition for Order Allowing Appeal.**

The J. F. Pyle & Son., Inc., defendant in the above-entitled suit, conceiving itself aggrieved by the interlocutory order or decree made, filed and entered in the above entitled suit on August 22d, 1921, granting the motion of the plaintiff that Dunkley Company be added as a party plaintiff in said suit, to the end that the injunction heretofore ordered in said suit be continued in force and effect and defendant enjoined as in and by said injunction set forth, and the opposition and objections of defendant to such motion and to the continuing in effect of such injunction and defend-

ant's motion to vacate and set aside the interlocutory decree and injunction was and were overruled and denied, comes now, by Francis J. Heney, Kemper B. Campbell, William J. Carr and Frederick S. Lyon, its attorneys, and petitions this Court for an order allowing it, J. F. Pyle & Son, Inc., an appeal from said order to the Honorable the United States Circuit Court of Appeals for the Ninth Circuit, under and pursuant to the laws in that behalf made and provided; and that a transcript of the record, testimony, exhibits and all proceedings and papers upon which said order was made, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit; also that an order be made fixing the [272] amount of security which defendant shall give and furnish to cover any and all costs which may be adjudged against it by reason of such appeal in the event such appeal is not sustained.

And now at the time of filing and presenting this petition for order allowing said appeal defendant presents and files its Assignments of Error setting up separately and particularly each error asserted and intended to be urged in the United States Circuit Court of Appeals for the Ninth Circuit, and your petitioner will ever pray, etc.

J. F. PYLE & SON, INC.,  
By FRANCIS J. HENEY,  
KEMPER B. CAMPBELL,  
WILLIAM J. CARR,  
FREDERICK S. LYON,

Its Attorneys. [273]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

IN EQUITY—No. 210.

“DUNKLEY COMPANY” (now known as Michigan Canning & Machinery Company) and DUNKLEY COMPANY,

Plaintiffs,

vs.

J. F. PYLE & SON, INC.,

Defendant.

### **Assignments of Error.**

Comes now defendant above named and specifies and assigns the following as the errors upon which it will rely upon its appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the order of this Court made, filed and entered herein on August 22d, 1921, granting the motion of plaintiff to make or add as a party plaintiff Dunkley Company and continue the injunction heretofore ordered, granted and issued in force and effect and overruling and denying defendant's motion to set aside and vacate the Interlocutory Decree and the injunction herein:

That said District Court of the United States, aforesaid, in making, filing and entering said order, erred as follows:

I. In granting plaintiff's said motion.

II. In denying defendant's said motion.

III. In not holding and ordering that by reason of the original plaintiff herein, Dunkley Company (now



known as Michigan Canning & Machinery Company), having assigned all right, title and interest in and to the patent in suit and in the matters in suit prior to the decision of this suit by said District Court, and prior to the entry of said Interlocutory Decree, the said decision, and the said Interlocutory [274] Decree, and all proceedings subsequent to such assignment were are void, nugatory and of no effect.

IV. In not holding, ordering and decreeing that by reason of the said assignment and transfer of the exclusive right, title and interest in and to the patent in suit prior to the decision of this suit by this Court and prior to the entry of the said Interlocutory Decree herein this suit abated and that said Interlocutory Decree was nugatory and void and must be set aside and vacated, and the cause set down for trial and determination on proofs to be offered upon behalf of the parties.

V. In not vacating and setting aside said Interlocutory Decree and said injunction for the reason that there is now a misjoinder of parties plaintiff.

VI. In not vacating and setting aside said Interlocutory Decree and said Injunction for the reason that at the time of the entry and granting thereof there was no party plaintiff in this cause before the court having any right, title or interest in or entitled to such Interlocutory Decree or to said Injunction.

VII. In granting plaintiff's said motion and giving full force and effect to the said Interlocutory Decree and to the said Injunction, without giving defendant a right to a trial and a right to offer and prove its defense.

VIII. In not vacating and setting aside the Interlocutory Decree and Injunction herein as nugatory and void and placing this suit for hearing and trial upon its merits upon proper pleadings and proof between and on behalf of the Dunkley Company, as assignee of the original plaintiff, and this defendant.

In order that the foregoing assignments of error may be and appear of record, defendant presents the same to the Court and prays that such disposition may be made thereof as is in [275] accordance with the laws of the United States.

WHEREFORE, the said defendant prays that the said order of this Court, and the said Interlocutory Decree and the said Injunction, and each thereof, be reversed, vacated and set aside, and that this Court be ordered and directed to so vacate and set aside the same and each thereof.

All of which is respectfully submitted,

FRANCIS J. HENEY,  
KEMPER B. CAMPBELL,  
WILLIAM J. CARR,  
FREDERICK S. LYON,  
Attorneys for Defendant.

[Endorsed]: Filed Sept. 21, 1921. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [276]

In the Southern Division of the United States District  
Court for the Northern District of California,  
Southern Division.

IN EQUITY—No. 211.

“DUNKLEY COMPANY” (now known as Michi-  
gan Canning & Machinery Company) and  
DUNKLEY COMPANY,

Plaintiffs,

vs.

HUNT BROTHERS COMPANY,

Defendant.

### **Order Allowing Appeal.**

Upon the filing of the petition for order allowing appeal, and the filing of the assignments of error accompanying the same, on motion of Frederick S. Lyon, Esq., attorney for defendant, it is ordered that an appeal be and the same is hereby allowed the defendant, in the above-entitled suit to the United States Circuit Court of Appeals for the Ninth Circuit from the order made, filed and entered herein on August 22d, 1921, allowing and granting plaintiff's motion that Dunkley Company be made or added as a party plaintiff herein; and that a transcript of the record, testimony, exhibits and all proceedings and papers upon which said order was made, be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit upon defendant giving a bond in the sum of \$250.00 with good and sufficient surety to be approved by the court conditioned that defend-

ant shall answer all costs which may be adjudged against it if it fails to make good its said appeal.

Dated, San Francisco, California, September 20th, 1921.

WM. C. VAN FLEET,  
Judge. [277]

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In the Southern Division of the United States District Court for the Northern District of California, Second Division.

IN EQUITY—No. 211.

“DUNKLEY COMPANY” (now known as Michigan Canning & Machinery Company) and  
DUNKLEY COMPANY,

Plaintiffs,

vs.

HUNT BROTHERS COMPANY,

Defendant.

**Petition for Order Allowing Appeal.**

The Hunt Brothers Company, defendant in the above-entitled suit, conceiving itself aggrieved by the interlocutory order or decree made, filed and entered in the above entitled suit on August 22d, 1921, granting the motion of the plaintiff that Dunkley Company be added as a party plaintiff in said suit, to the end that the injunction heretofore ordered in said suit be continued in force and effect and defendant enjoined as in and by said injunction set forth, and the opposition and objections of defendant to such motion and to the continuing in effect of such injunction and de-

fendant's motion to vacate and set aside the interlocutory decree and injunction was and were overruled and denied, comes now, by Francis J. Heney, Kemper B. Campbell, William J. Carr and Frederick S. Lyon, its attorneys, and petitions this Court for an order allowing it, Hunt Brothers Company, an appeal from said order, to the Honorable the United States Circuit Court of Appeals for the Ninth Circuit, under and pursuant to the laws in that behalf made and provided; and that a transcript of the record, testimony, exhibits and all proceedings and papers upon which said order was made, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit; also that an order be made fixing [278] the amount of security which defendants shall give and furnish to cover any and all costs which may be adjudged against it by reason of such appeal in the event such appeal is not sustained.

And now at the time of filing and presenting this petition for order allowing said appeal defendant presents and files its Assignment of Error setting up separately and particularly each error asserted and intended to be urged in the United States Circuit Court of Appeals for the Ninth Circuit, and your petitioner will ever pray, etc.

HUNT BROTHERS COMPANY.

By FRANCIS J. HENEY,  
KEMPER B. CAMPBELL,  
WILLIAM J. CARR,  
FREDERICK S. LYON,

Its Attorneys. [279]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

IN EQUITY—No. 211.

“DUNKLEY COMPANY” (now known as Michigan Canning & Machinery Company) and  
DUNKLEY COMPANY,

.. Plaintiffs,

vs.

HUNT BROS. COMPANY,

Defendant.

### **Assignments of Error.**

Comes now defendant above named and specifies and assigns the following as the errors upon which it will rely upon its appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the order of this Court made, filed and entered herein on August 22d, 1921, granting the motion of plaintiff to make or add as a party plaintiff Dunkley Company and continue the injunction heretofore ordered, granted and issued in force and effect and overruling and denying defendant's motion to set aside and vacate the Interlocutory Decree and the injunction herein:

That said District Court of the United States, afore-said, in making, filing and entering said order, erred as follows:

I. In granting plaintiff's said motion.

II. In denying defendant's said motion.

III. In not holding and ordering that by reason of the original plaintiff herein, Dunkley Company



(now known as Michigan Canning & Machinery Company), having assigned all right, title and interest in and to the patent in suit and in the matters in suit prior to the decision of this suit by said District Court, and prior to the entry of said Interlocutory Decree, the said decision, and the said Interlocutory [280] Decree, and all proceedings subsequent to such assignment were are void, nugatory and of no effect.

IV. In not holding, ordering and decreeing that by reason of the said assignment and transfer of the exclusive right, title and interest in and to the patent in suit prior to the decision of this suit by this Court and prior to the entry of the said Interlocutory Decree herein this suit abated and that said Interlocutory Decree was nugatory and void and must be set aside and vacated, and the cause set down for trial and determination on proofs to be offered upon behalf of the parties.

V. In not vacating and setting aside said Interlocutory Decree and said Injunction for the reason that there is now a misjoinder of parties plaintiff.

VI. In not vacating and setting aside said Interlocutory Decree and said injunction for the reason that at the time of the entry and granting thereof there was no party plaintiff in this cause before the court having any right, title or interest in or entitled to such Interlocutory Decree or to said injunction.

VII. In granting plaintiff's said motion and giving full force and effect to the said Interlocutory Decree and to the said Injunction, without giving defendant a right to a trial and a right to offer and prove its defense.

VIII. In not vacating and setting aside the Interlocutory Decree and Injunction herein as nugatory and void and placing this suit for hearing and trial upon its merits upon proper pleadings and proofs between and on behalf of the Dunkley Company, as assignee of the original plaintiff, and this defendant.

In order that the foregoing assignments of error may be and appear of record, defendant presents the same to the Court and prays that such disposition may be made thereof as is in [281] accordance with the laws of the United States.

WHEREFORE, the said defendant prays that the said order of this Court, and the said Interlocutory Decree and the said Injunction, and each thereof, be reversed, vacated and set aside, and that this Court be ordered and directed to so vacate and set aside the same and each thereof.

All of which is respectfully submitted.

FRANCIS J. HENEY,  
KEMPER B. CAMPBELL,  
WILLIAM J. CARR,  
FREDERICK S. LYON,  
Attorneys for Defendant.

[Endorsed]: Filed Sept. 21, 1921. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [282]

In the Southern Division of the United States District  
Court for the Northern District of California,  
Southern Division.

IN EQUITY—No. 212.

“DUNKLEY COMPANY” (now known as Michi-  
gan Canning & Machinery Company) and  
DUNKLEY COMPANY,

Plaintiffs,

vs.

SUNLIT FRUIT COMPANY,

Defendant.

**Order Allowing Appeal.**

Upon the filing of the petition for order allowing appeal, and the filing of the assignments of error accompanying the same, on motion of Frederick S. Lyon, Esq., attorney for defendant, it is ordered that an appeal be and the same is hereby allowed the defendant, in the above entitled suit to the United States Circuit Court of Appeals for the Ninth Circuit from the order made, filed and entered herein on August 22d, 1921, allowing and granting plaintiff's motion that Dunkley Company be made or added as a party plaintiff herein; and that a transcript of the record, testimony, exhibits and all proceedings and papers upon which said order was made, be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit upon defendant giving a bond in the sum of \$250.00 with good and sufficient surety to be approved by the court conditioned that defend-

ant shall answer all costs which may be adjudged against it if it fails to make good its said appeal.

Dated, San Francisco, California, September 20th, 1921.

WM. C. VAN FLEET,  
Judge. [283]

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In the Southern Division of the United States District Court for the Northern District of California, Second Division.

IN EQUITY—No. 212.

“DUNKLEY COMPANY” (now known as Michigan Canning & Machinery Company) and  
DUNKLEY COMPANY,

Plaintiffs,

vs.

SUNLIT FRUIT COMPANY,

Defendant.

**Petition for Order Allowing Appeal.**

The Sunlit Fruit Company, defendant in the above-entitled suit, conceiving itself aggrieved by the interlocutory order or decree made, filed and entered in the about entitled suit on August 22d, 1921, granting the motion of the plaintiff that Dunkley Company be added as a party plaintiff in said suit, to the end that the injunction heretofore ordered in said suit be continued in force and effect and defendant enjoined as in and by said injunction set forth, and the opposition and objections of defendant to such motion and to the continuing in effect of such injunction and de-

fendant's motion to vacate and set aside the interlocutory decree and injunction was and were overruled and denied, comes now, by Francis J. Heney, Kemper B. Campbell, William J. Carr and Frederick S. Lyon, its attorneys, and petitions this Court for an order allowing it, Sunlit Fruit Company, an appeal from said order, to the Honorable the United States Circuit Court of Appeals for the Ninth Circuit, under and pursuant to the laws in that behalf made and provided; and that a transcript of the record, testimony, exhibits and all proceedings and papers upon which said order was made, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit; also that an order be made [284] fixing the amount of security which defendant shall give and furnish to cover any and all costs which may be adjudged against it by reason of such appeal in the event such appeal is not sustained.

And now at the time of filing and presenting this petition for order allowing said appeal defendant presents and files its Assignments of Error setting up separately and particularly each error asserted and intended to be urged in the United States Circuit Court of Appeals for the Ninth Circuit, and your petitioner will ever pray, etc.

SUNLIT FRUIT COMPANY,

By FRANCIS J. HENEY,  
KEMPER B. CAMPBELL,  
WILLIAM J. CARR,  
FREDERICK S. LYON,

Its Attorneys. [285]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

IN EQUITY—No. 212.

“DUNKLEY COMPANY” (now known as Michigan Canning & Machinery Company) and  
DUNKLEY COMPANY,

Plaintiffs,

vs.

SUNLIT FRUIT COMPANY,

Defendant.

### **Assignments of Error.**

Comes now defendant above named and specifies and assigns the following as the errors upon which it will rely upon its appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the order of this Court made, filed and entered herein on August 22d, 1921, granting the motion of plaintiff to make or add as a party plaintiff Dunkley Company and continue the injunction heretofore ordered, granted and issued in force and effect and overruling and denying defendant's motion to set aside and vacate the Interlocutory Decree and the Injunction herein.

That said District Court of the United States, aforesaid, in making, filing and entering said order, erred as follows:

- I. In granting plaintiff's said motion.
- II. In denying defendant's said motion.
- III. In not holding and ordering that by reason of the original plaintiff herein, Dunkley Company



(now known as Michigan Canning & Machinery Company), having assigned all right, title and interest in and to the patent in suit and in the matters in suit prior to the decision of this suit by said District Court, and prior to the entry of said Interlocutory Decree, the said decision, and the said Interlocutory Decree, and all proceedings subsequent to such assignment were and are void, nugatory and of [286] no effect.

IV. In not holding, ordering and decreeing that by reason of the said assignment and transfer of the exclusive right, title and interest in and to the patent in suit prior to the decision of this suit by this Court and prior to the entry of the said Interlocutory Decree herein this suit abated and that said Interlocutory Decree was nugatory and void and must be set aside and vacated, and the cause set down for trial and determination on proofs to be offered upon behalf of the parties.

V. In not vacating and setting aside said Interlocutory Decree and said Injunction for the reason that there is now a misjoinder of parties plaintiff.

VI. In not vacating and setting aside said Interlocutory Decree and said Injunction for the reason that at the time of the entry and granting thereof there was no party plaintiff in this cause before the Court having any right, title or interest in or entitled to such Interlocutory Decree or to said Injunction.

VII. In granting plaintiff's said motion and giving full force and effect to the said Interlocutory Decree and to the said Injunction, without giving defendant a right to a trial and a right to offer and prove its defense.

VIII. In not vacating and setting aside the Interlocutory Decree and Injunction herein as nugatory and void and placing this suit for hearing and trial upon its merits upon proper pleadings and proofs between and on behalf of the Dunkley Company, as assignee of the original plaintiff, and this defendant.

In order that the foregoing assignments of error may be and appear of record, defendant presents the same to the Court and prays that such disposition may be made thereof as is in accordance with the laws of the United States.

WHEREFORE the said defendant prays that the said order [287] of this court and the said Interlocutory Decree and the said Injunction, and each thereof, be reversed, vacated and set aside, and that this Court be ordered and directed to so vacate and set aside the same and each thereof.

All of which is respectfully submitted.

FRANCIS J. HENEY,  
KEMPER B. CAMPBELL,  
WILLIAM J. CARR,  
FREDERICK S. LYON,

Attorneys for Defendant.

[Endorsed]: Filed Sept. 21, 1921. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [288]

In the Southern Division of the United States District  
Court for the Northern District of California,  
Southern Division.

IN EQUITY—No. 201.

“DUNKLEY COMPANY” (Now known as  
Michigan Canning & Machinery Company)  
and DUNKLEY COMPANY, Plaintiff,  
vs.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Defendant.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:  
That Maryland Casualty Company, a corporation of  
the State of Maryland, and duly licensed to transact  
business in the State of California, is held and firmly  
bound unto plaintiffs Michigan Canning & Ma-  
chinery Company (formerly known as Dunkley Com-  
pany), and Dunkley Company, in the penal sum of  
Two Hundred Fifty (\$250.00) Dollars, to be paid  
to the said Michigan Canning & Machinery Company  
and Dunkley Company, their successors and assigns,  
for which payment, well and truly to be made, the  
Maryland Casualty Company, binds itself, its succes-  
sors and assigns, firmly by these presents.

Sealed with its corporate seal and dated this 19th  
day of September, 1921.

The condition of this obligation is such that whereas  
the Central California Canneries Company, the de-  
fendant in the above-entitled suit, is about to take an  
appeal to the United States Circuit Court of Appeals

for the Ninth Circuit to reverse the order made, filed and entered on August 22d, 1921, in the above-entitled suit, granting and allowing plaintiff's motion that Dunkley Company be made or added as a party plaintiff in said suit and overruling and denying defendant's opposition and objection to said motion and overruling and denying defendant's motion to vacate and set aside the Interlocutory Decree and [289] Injunction against defendant: Now, therefore, if the said defendant shall prosecute its said appeal to effect and answer all costs which may be adjudged against it, if it fail to make good its said appeal, this obligation shall be void; otherwise to remain in full force and effect.

MARYLAND CASUALTY COMPANY (Seal)

By FRANK J. WALLACE,

*Attorney-fact.*

(Premium charge, \$10.00 per annum.)

State of California,

City and County of San Francisco,—ss.

On this 20th day of September, in the year one thousand nine hundred and twenty-one, before me, Jesse M. Whited, a notary public in and for the City and County of San Francisco, personally appeared Frank J. Wallace, known to me to be the attorney-in-fact of the Maryland Casualty Company, the corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the corporation therein named, and he acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco the day and year in this certificate first above written.

[Seal] JESSE M. WHITED,  
Notary Public in and for the City and County of  
San Francisco, State of California.

The within bond and the surety thereon is hereby approved this September 20th, 1921.

VAN FLEET,  
Judge.

[Endorsed]: Filed Sept. 21, 1921. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [290]

In the Southern Division of the United States District  
Court for the Northern District of California,  
Southern Division.

IN EQUITY—No. 202.

“DUNKLEY COMPANY” (Now known as  
Michigan Canning & Machinery Company)  
and DUNKLEY COMPANY, Plaintiffs,  
vs.

GRIFFIN & SKELLEY COMPANY,  
 Defendant.

### Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS:  
That Maryland Casualty Company, a corporation of  
the State of Maryland, and duly licensed to transact  
business in the State of California, is held and firmly

bound unto plaintiffs Michigan Canning & Machinery Company (formerly known as Dunkley Company), and Dunkley Company, in the penal sum of Two Hundred Fifty (\$250.00) Dollars, to be paid to the said Michigan Canning & Machinery Company, their successors and assigns, for which payment, well and truly to be made, the Maryland Casualty Company, binds itself, its successors and assigns firmly by these presents.

Sealed with its corporate seal and dated this 19th day of September, 1921.

The condition of this obligation is such that whereas the Central California Canneries Company, the defendant in the above-entitled suit, is about to take an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the order made, filed and entered on August 22d, 1921, in the above-entitled suit, granting and allowing plaintiff's motion that Dunkley Company be made or added as a party plaintiff in said suit and overruling and denying defendant's opposition and objection to said motion and overruling and denying defendant's motion to vacate and set aside the Interlocutory Decree and [291] Injunction against defendant: Now, therefore, if the said defendant shall prosecute its said appeal to effect and answer all costs which may be adjudged against it, if it fail to make good its said appeal, this obligation shall be void; otherwise to remain in full force and effect.

MARYLAND CASUALTY COMPANY, (Seal)

By FRANK J. WALLACE,

*Attorney-fact.*

(Premium charge, \$10.00 per annum.)



State of California,

City and County of San Francisco,—ss.

On this 20th day of September, in the year one thousand nine hundred and twenty-one, before me, Jesse M. Whited, a notary public in and for the City and County of San Francisco, personally appeared Frank J. Wallace, known to me to be the attorney-in-fact of the Maryland Casualty Company, the corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the corporation therein named, and he acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco the day and year in this certificate first above written.

[Seal]

JESSE M. WHITED,

Notary Public in and for the City and County of  
San Francisco, State of California.

The within bond and the surety thereon is hereby approved this September 20th, 1921.

VAN FLEET,

Judge.

[Endorsed]: Filed Sept. 21, 1921. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [292]

In the Southern Division of the United States District Court for the Northern District of California, Southern Division.

IN EQUITY—No. 205.

“DUNKLEY COMPANY” (Now known as  
Michigan Canning & Machinery Company)  
and DUNKLEY COMPANY, Plaintiffs,  
vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:  
That Maryland Casualty Company, a corporation of the State of Maryland, and duly licensed to transact business in the State of California, is held and firmly bound unto Plaintiffs Michigan Canning & Machinery Company (formerly known as Dunkley Company), and Dunkley Company, in the penal sum of Two Hundred Fifty (\$250.00) Dollars, to be paid to the said Michigan Canning & Machinery Company and Dunkley Company, their successors and assigns, for which payment, well and truly to be made, the Maryland Casualty Company, binds itself, its successors and assigns by these presents.

Sealed with its corporate seal and dated this 19th day of September, 1921.

The condition of this obligation is such that whereas the Central California Canneries Company, the defendant in the above-entitled suit, is about to take an appeal to the United States Circuit Court of Ap-

peals for the Ninth Circuit to reverse the order made, filed and entered on August 22d, 1921, in the above-entitled suit, granting and allowing plaintiff's motion that Dunkley Company be made or added as a party plaintiff in said suit and overruling and denying defendant's opposition and objection to said motion and overruling and denying defendant's motion to vacate and set aside the Interlocutory Decree and [293] Injunction against defendant: Now, therefore, if the said defendant shall prosecute its said appeal to effect and answer all costs which may be adjudged against it, if it fail to make good its said appeal, this obligation shall be void; otherwise to remain in full force and effect.

MARYLAND CASUALTY COMPANY, (Seal)

By FRANK J. WALLACE,

*Attorney-in-fact.*

(Premium charge, \$10.00 per annum.)

State of California,  
City and County of San Francisco,—ss.

On this 20th day of September, in the year one thousand nine hundred and twenty-one, before me, Jesse M. Whited, a notary public in and for the City and County of San Francisco, personally appeared Frank J. Wallace, known to me to be the attorney-in-fact of the Maryland Casualty Company, the corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the corporation therein named, and he acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco the day and year in this certificate first above written.

[Seal] JESSE M. WHITED,  
Notary Public in and for the City and County of San Francisco, State of California.

The within bond and the surety thereon is hereby approved this September 20th, 1921.

VAN FLEET,  
Judge.

[Endorsed]: Filed Sept. 21, 1921. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [294]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Southern Division.

IN EQUITY—No. 206.

“DUNKLEY COMPANY” (Now known as  
Michigan Canning & Machinery Company)  
and DUNKLEY COMPANY, Plaintiffs,  
vs.

ANDERSON-BARNGROVER MFG. COM-  
PANY, Defendant.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:  
That Maryland Casualty Company, a corporation of  
the State of Maryland, and duly licensed to transact  
business in the State of California, is held and firmly

bound unto plaintiffs Michigan Canning & Machinery Company (formerly known as Dunkley Company), and Dunkley Company, in the penal sum of Two Hundred Fifty (\$250.00) Dollars, to be paid to the said Michigan Canning & Machinery Company and Dunkley Company, their successors and assigns, for which payment, well and truly to be made, the Maryland Casualty Company, binds itself, its successors and assigns firmly by these presents.

Sealed with its corporate seal and dated this 19th day of September, 1921.

The condition of this obligation is such that whereas the Central California Canneries Company, the defendant in the above-entitled suit, is about to take an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the order made, filed and entered on August 22d, 1921, in the above-entitled suit, granting and allowing plaintiff's motion that Dunkley Company be made or added as a party plaintiff in said suit and overruling and denying defendant's opposition and objection to said motion and overruling and denying defendant's motion to vacate and set aside the Interlocutory Decree and [295] Injunction against defendant: Now, therefore, if the said defendant shall prosecute its said appeal to effect and answer all costs which may be adjudged against it, if it fail to make good its said appeal, this obligation shall be void; otherwise to remain in full force and effect.

MARYLAND CASUALTY COMPANY, (Seal)

By FRANK J. WALLACE,

*Attorney-fact.*

(Premium charge \$10.00 per annum.)

State of California,  
City and County of San Francisco,—ss.

On this 20th day of September, in the year one thousand nine hundred and twenty-one, before me, Jesse M. Whited, a notary public in and for the City and County of San Francisco, personally appeared Frank J. Wallace, known to me to be the Attorney-in-Fact of the Maryland Casualty Company, the corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the corporation therein named, and he acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco the day and year in this certificate first above written.

[Seal] JESSE M. WHITED,  
Notary Public in and for the City and County of San  
Francisco, State of California.

The within bond and the surety thereon is hereby approved this September 20th, 1921.

VAN FLEET,  
Judge.

[Endorsed]: Filed Sept. 21, 1921. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [296]



In the Southern Division of the United States District Court for the Northern District of California, Southern Division.

IN EQUITY—No. 209.

“DUNKLEY COMPANY” (Now known as  
Michigan Canning & Machinery Company)  
and DUNKLEY COMPANY, Plaintiffs,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:  
That Maryland Casualty Company, a corporation of the State of Maryland, and duly licensed to transact business in the State of California, is held and firmly bound unto plaintiffs Michigan Canning & Machinery Company (formerly known as Dunkley Company), and Dunkley Company, in the penal sum of Two Hundred Fifty (\$250.00) Dollars, to be paid to the said Michigan Canning & Machinery Company and Dunkley Company, their successors and assigns, for which payment, well and truly to be made, the Maryland Casualty Company, binds itself, its successors and assigns firmly by these presents.

Sealed with its corporate seal and dated this 19th day of September, 1921.

The condition of this obligation is such that whereas the Central California Canneries Company, the defendant in the above-entitled suit, is about to take an appeal to the United States Circuit Court of Appeals

for the Ninth Circuit to reverse the order made, filed and entered on August 22d, 1921, in the above-entitled suit, granting and allowing plaintiff's motion that Dunkley Company be made or added as a party plaintiff in said suit and overruling and denying defendant's opposition and objection to said motion and overruling and denying defendant's motion to vacate and set aside the Interlocutory Decree and [297] Injunction against defendant: Now, therefore, if the said defendant shall prosecute its said appeal to effect and answer all costs which may be adjudged against it, if it fail to make goods its said appeal, this obligation shall be void; otherwise to remain in full force and effect.

MARYLAND CASUALTY COMPANY, (Seal)

By FRANK J. WALLACE,

*Attorney-fact.*

(Premium charge \$10.00 per annum.)

State of California,

City and County of San Francisco,—ss.

On this 20th day of September, in the year one thousand nine hundred and twenty-one, before me, Jesse M. Whited, a notary public in and for the City and County of San Francisco, personally appeared Frank J. Wallace, known to me to be the attorney-in-fact of the Maryland Casualty Company, the corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the corporation therein named, and he acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco the day and year in this certificate first above written.

[Seal]                      JESSE M. WHITED,  
Notary Public in and for the City and County of San Francisco, State of California.

The within bond and the surety thereon is hereby approved this September 20th, 1921.

VAN FLEET,  
Judge.

[Endorsed]: Filed Sept. 21, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [298]

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In the Southern Division of the United States District Court for the Northern District of California, Southern Division.

IN EQUITY—No. 210.

“DUNKLEY COMPANY” (Now known as  
Michigan Canning & Machinery Company)  
and DUNKLEY COMPANY,      Plaintiff,  
vs.

J. F. PYLE & SON, INC.                      Defendant.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:  
That Maryland Casualty Company, a corporation of the State of Maryland, and duly licensed to transact business in the State of California, is held and firmly bound unto plaintiffs Michigan Canning & Machinery

Company (formerly known as Dunkley Company), and Dunkley Company, in the penal sum of Two Hundred Fifty (\$250.00) Dollars, to be paid to the said Michigan Canning & Machinery Company and Dunkley Company, their successors and assigns, for which payment, well and truly to be made, the Maryland Casualty Company, binds itself, its successors and assigns firmly by these presents.

Sealed with its corporate seal and dated this 19th day of September, 1921.

The condition of this obligation is such that whereas the Central California Canneries Company, the defendant in the above-entitled suit, is about to take an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the order made, filed and entered on August 22d, 1921, in the above-entitled suit, granting and allowing plaintiff's motion that Dunkley Company be made or added as a party plaintiff in said suit and overruling and denying defendant's opposition and objection to said motion and overruling and denying defendant's motion to vacate and set aside the Interlocutory Decree and Injunction against defendant: Now, therefore, if the said defendant shall [299] prosecute its said appeal to effect and answer all costs which may be adjudged against it, if it fail to make good its said appeal, this obligation shall be void; otherwise to remain in full force and effect.

MARYLAND CASUALTY COMPANY, (Seal)

By FRANK J. WALLACE,

Attorney-in-Fact.

(Premium charge \$10.00 per annum.)

State of California,  
City and County of San Francisco,—ss.

On this 20th day of September, in the year one thousand nine hundred and twenty-one, before me, Jesse M. Whited, a notary public in and for the City and County of San Francisco, personally appeared Frank J. Wallace, known to me to be the attorney-in-fact of the Maryland Casualty Company, the corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the corporation therein named, and he acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco the day and year in this certificate first above written.

[Seal] JESSE M. WHITED,  
Notary Public in and for the City and County of San  
Francisco, State of California.

The within bond and the surety thereon is hereby approved this September 20, 1921.

VAN FLEET,  
Judge.

[Endorsed]: Filed Sept. 21, 1921. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [300]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

IN EQUITY—No. 211.

“DUNKLEY COMPANY” (Now known as  
Michigan Canning & Machinery Company)  
and DUNKLEY COMPANY, Plaintiffs,  
vs.

HUNT BROS. COMPANY, Defendant.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:  
That Maryland Casualty Company, a corporation of the State of Maryland, and duly licensed to transact business in the State of California, is held and firmly bound unto plaintiffs Michigan Canning & Machinery Company (formerly known as Dunkley Company), and Dunkley Company, in the penal sum of Two Hundred Fifty (\$250.00) Dollars, to be paid to the said Michigan Canning & Machinery Company and Dunkley Company, their successors and assigns, for which payment, well and truly to be made, the Maryland Casualty Company, binds itself, its successors and assigns by these presents.

Sealed with its corporate seal and dated this 19th day of September, 1921.

The condition of this obligation is such that whereas the Central California Canneries Company, the defendant in the above-entitled suit, is about to take an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the order made, filed



and entered on August 22nd, 1921, in the above-entitled suit, granting and allowing plaintiff's motion that Dunkley Company be made or added as a party plaintiff in said suit and overruling and denying defendant's opposition and [301] objection to said motion and overruling and denying motion to vacate and set aside the Interlocutory Decree and Injunction against defendant: Now, therefore, if the said defendant shall prosecute its said appeal to effect and answer all costs which may be adjudged against it, if it fail to make good its appeal, this obligation shall be void; otherwise to remain in full force and effect.

MARYLAND CASUALTY COMPANY,

By FRANK J. WALLACE,

Attorney-in-fact.

(Premium charge \$10.00 per annum.)

State of California,

City and County of San Francisco,—ss.

On this 20th day of September, in the year one thousand nine hundred and twenty-one, before me, Jesse W. Whited, a notary public in and for the City and County of San Francisco, personally appeared Frank J. Wallace, known to me to be the attorney-in-fact of the Maryland Casualty Company, the corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the corporation therein named,) and he acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal at my office in the

City and County of San Francisco, in the day and year in this certificate first above written.

[Seal] JESSE M. WHITED,  
Notary Public in and for the City and County of San Francisco, State of California.

The within bond and the surety thereon is hereby approved this September 20, 1921.

VAN FLEET,  
Judge.

[Endorsed]: Filed Sept. 21, 1921. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [302]

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In the Southern Division of the United States District  
Court for the Northern District of California,  
Southern Division.

IN EQUITY—No. 212.

“DUNKLEY COMPANY” (Now known as  
Michigan Canning & Machinery Company)  
and DUNKLEY COMPANY, Plaintiff,  
vs.

SUNLIT FRUIT COMPANY, Defendant.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:  
That Maryland Casualty Company, a corporation of  
the State of Maryland, and duly licensed to transact  
business in the State of California, is held and firmly  
bound unto plaintiffs Michigan Canning & Machin-  
ery Company (formerly known as Dunkley Com-  
pany), and Dunkley Company, in the penal sum of

Two Hundred Fifty (\$250.00) Dollars, to be paid to the said Michigan Canning & Machinery Company and Dunkley Company, their successors and assigns, for which payment, well and truly to be made, the Maryland Casualty Company, binds itself, its successors and assigns by these presents.

Sealed with its corporate seal and dated this 19th day of September, 1921.

The condition of this obligation is such that whereas the Central California Canneries Company, the defendant in the above-entitled suit, is about to take an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the order made, filed and entered on August 22nd, 1921, in the above-entitled suit, granting and allowing plaintiff's motion that Dunkley Company be made or added as a party plaintiff in said suit and overruling and denying defendant's opposition and objection to said motion and overruling and denying defendant's motion to vacate and set aside the Interlocutory Decree and Injunction against defendant: Now, therefore, if the said defendant shall [303] prosecute its said appeal to effect and answer all costs which may be adjudged against it, if it fail to make good its said appeal, this obligation shall be void; otherwise to remain in full force and effect.

MARYLAND CASUALTY COMPANY, (Seal)

By FRANK J. WALLACE,

Attorney-in-fact.

(Premium charge \$10.00 per annum.)

State of California,  
City and County of San Francisco,—ss.

On this 20th day of September, in the year one thousand nine hundred and twenty-one, before me, Jesse M. Whited, a notary public in and for the City and County of San Francisco, personally appeared Frank J. Wallace, known to me to be the attorney-in-fact of the Maryland Casualty Company, the corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the corporation therein named, and he acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco the day and year in this certificate first above written.

[Seal]

JESSE M. WHITED,

Notary Public in and for the City and County of San Francisco, State of California.

The within bond and the surety thereon is hereby approved this September 20, 1921.

VAN FLEET,  
Judge.

[Endorsed]: Filed Sept. 21, 1921. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [304]

(Title of Court and Causes.)

**Praecipe for Transcript of Record on Appeal.**

To the Clerk of said Court:

Please prepare and certify to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit copies of the following, the same to constitute the transcript on appeal to the said United States Circuit Court of Appeals on defendant's appeal from that certain order of the Court entered August 22, 1921, granting plaintiff's motion that "the said new Dunkley Company be made a party plaintiff herein", and entitled "motion made pursuant to permission given in the mandate of the United States Circuit Court of Appeals", said order being as follows, to wit:

"Defendant's motion to reopen the decree and plaintiff's motion to add new party plaintiff heretofore heard and submitted, being now fully considered, and the Court having filed its written opinion, it is ordered that said motion to reopen the decree be and the same is hereby denied and that the motion to add new party plaintiff be and the same is hereby granted."

1. Order of the Court made and entered on or about the 6th day of April, 1916, that said cause stand submitted.
2. Motion by defendants in each of the above cases and entitled "Application for a request to the Circuit Court of Appeals to recall its mandate, and for a rehearing", filed on or about the 14th day of October, 1918.
3. Motion by plaintiff made in each of the above cases and entitled "Motion made pursuant to per-

mission [305] given in the mandate of the United States Circuit Court of Appeals", and filed on or about the 17th day of July, 1918.

4. The following affidavits filed by defendants in said cases and used upon the hearing of said motions. Affidavits of:

Augensen, August M.

Augensen, August M. (supplemental)

Brazill, Thomas B.

Breen, Katherine

Brown, Geo. K.

Brown, Geo. K. (supplemental)

Brown, Mrs. Geo. K.

Buckley, Fred J.

Campbell, Kemper

Campbell, Stewart

Clark, Robert H.

Crosthwaite, L.

Crosthwaite, L. (two affidavits)

De Loof, Martin H.

De Pue, Chas.

De Pue, Mrs. Chas.

Funk, Clyde M.

Geiger, Wm. A.

Grier, G. E.

Harold, George

Harold, Mrs. George

Hetherington, John; John Hetherington (supplemental)

Hinterliter, William

Hinterliter, Mary

Hodgson, John



Howes, Maud  
 Hycoop, Jacob  
 Janashak, Dorothy  
 Kern, Leander  
 Kern, Mrs. Leander  
 Kreugler, Mrs. Ed.  
 Mapes, Edwin B.  
 McEwing, Wm.  
 McFarland, Bert.  
 Miller, John C.  
 Moore, Eleanor  
 Myhan, George H.  
 Newton, Chas.  
 Newton, Robert  
 Norton, Arthur W.  
 Norton, Arthur W. (supplemental)  
 Noud, John F.  
 Plating, Nicholas  
 Plating, Nicholas (two affidavits)  
 Payne, Louis  
 Robinson, Daniel P.  
 Spencer, Wm. C.  
 Stafford, Mrs. Mary J.  
 Stebler, Fred [306]  
 Stewart, Harrie  
 Triage, Wm.  
 Vanderbrook, Abe  
 Van Ostrand, S.  
 Webb, Estelle (Mrs. Frank)  
 Weed, Mrs. Nellie  
 White, Wm. K.

5. Opinion of the Court filed August 22, 1921.
6. Order of the Court entered August 22, 1921.
7. Petition of Hunt Brothers Company for order allowing appeal.
8. Assignment of errors, this appeal.
9. Order allowing appeal of Hunt Brothers Company.
10. Bond on this appeal.
11. Citation, this appeal.
12. Stipulation respecting form of record on this appeal and entitled in all of said cases, and heretofore filed.

FREDERICK S. LYON,  
KEMPER B. CAMPBELL,  
W. J. CARR,  
FRANCIS J. HENEY,  
Solicitors for Defendant.

Received copy of Praeceptum this 28th day of December, 1921.

FRED L. CHAPPELL,  
W. A. RICHARDSON,  
Solicitors for Plaintiff.

[Endorsed]: Filed Dec. 29, 1921. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [307]

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(Title of Court and Causes.)

**Stipulation Respecting Form of Record on Appeal  
and Hearing of Appeal From That Certain  
Order of the Court Entered August 22, 1921,  
in Each of the Above Cases.**

WHEREAS, the defendants have taken an appeal

in each of the above-entitled cases to the United States Circuit Court of appeals for the Ninth Circuit from that certain order of the Court entered in each of said cases on the 22d day of August, 1921, to wit:

“Defendant’s motion to reopen the decree and plaintiff’s motion to add new party plaintiff heretofore heard and submitted, being now fully considered, and the Court having filed its written opinion, it is ordered that said motion to reopen the decree be and the same is hereby denied and that the motion to add new party plaintiff be and the same is hereby granted.”

WHEREAS, pursuant to the stipulation of all the above-named parties, the motion by plaintiff entitled “Motion made pursuant to permission given in the Mandate of the United States Circuit Court of Appeals”, and the motion by each of the defendants above-named entitled “Motion—Application for a Request to the Circuit Court of Appeals to recall its Mandate and for a Rehearing”, were made in all of the above entitled cases, and were heard, tried and determined at the same time and upon the same evidence, proofs and records, and a similar order was entered thereon in each of said causes;

And whereas said evidence, proofs and records include the transcript of record and transcript on appeal in the case of Dunkley Company and Michigan Canning & Machinery Company, Appellants, vs. Pasadena Canning Company and Geo. E. Grier, Appellees, in the United States Circuit Court of Appeals for the Ninth Circuit, No. 3316, together with the briefs, and documentary, mechanical, photographic and other ex-

hibits on file therein, and now a part of the files and records of this [308] court; and include the transcript of record and the transcript on appeal in the case of Central California Canneries Company Inc., Griffin & Skelley Company, J. C. Ainsley Packing Company, Anderson-Barngrover Manufacturing Company, Golden Gate Packing Company, J. F. Pyle & Son Inc., Sunlit Fruit Company and Hunt Brothers Company, Appellants, vs. Dunkley Company, a corporation, Appellee, No. 2915 in the United States Circuit Court of Appeals for the Ninth Circuit, together with the briefs, and documentary photographic, mechanical and other exhibits, on file therein and now a part of the files and records of this court; and include a transcript of record in the case of Dunkley Company, Complainant vs. California Packing Corporation, Defendant, No. 572 in the United States District Court, Southern District of New York, together with the briefs, and documentary exhibits entitled "Dunkley Pay-rolls, 1902"; "Dunkley Pay-rolls, 1903"; and "Dunkley Pay-rolls, 1904"; and include the affidavits of the following:

Augensen, August M.

Augensen, August M. (supplemental)

Brazill, Thomas B.

Breen, Katherine

Brown, Geo. K.

Brown, Geo. K. (supplemental)

Brown, Mrs. Geo. K.

Buckley, Fred J.

Campbell, Kemper

Campbell, Stewart

Clark, Robert H.  
Crosthwaite, L.  
Crosthwaite, L. (two affidavits)  
De Loof, Martin H.  
De Pue, Chas.  
De Pue, Mrs. Chas.  
Funk, Clyde M.  
Geiger, Wm. A.  
Grier, G. E.  
Harold, George  
Harold, Mrs. George  
Hetherington, John  
Hetherington, John (supplemental)  
Hinterliter, William  
Hinterliter, Mary [309]  
Hodgson, John  
Howes, Maud  
Hycoop, Jacob  
Janashak, Dorothy  
Kern, Leander  
Kern, Mrs. Leander  
Kreugler, Mrs. Ed.  
Mapes, Edwin B.  
McEwing, Wm.  
McFarland, Bert  
Miller, John C.  
Moore, Eleanor  
Myhan, George H.  
Newton, Chas.  
Newton, Robert  
Norton, Arthur W.  
Norton, Arthur W. (supplemental)

Noud, John F.

Plating, Nicholas

Plating, Nicholas (two affidavits)

Payne, Louis

Robinson, Daniel P.

Spencer, Wm. C.

Stafford, Mrs. Mary J.

Stebler, Fred

Stewart, Harrie

Triece, Wm.

Vanderbrook, Abe

Van Ostrand, S.

Webb, Estelle (Mrs. Frank)

Weed, Mrs. Nellie

White, Wm. K.

all of the foregoing being filed in support of defendant's motion "application for a request to the Circuit Court of Appeals to recall its mandate, and for a rehearing"; and in opposition to plaintiff's motion, the order granting which is herein appealed from:

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED as follows:

I. All of said respective appeals taken by the respective defendants in the above-entitled cases from said order of August 22, 1921, made and entered in each of said cases, may and shall be heard upon one and the same record on appeal.

II. Said printed transcript of record shall not include [310] the bill of complaint, answer to the bill of complaint, opinion of the Court rendered Monday, December 4, 1916, nor the interlocutory decree filed December 8, 1916, it being stipulated that the bills of



complaint, answers thereto, opinions of the court and interlocutory decrees in all of the above-entitled causes are the same as and identical with the corresponding papers and records on file in this court and in the transcript of record in said case of Central California Canneries Company, a corporation, et al, Appellants, vs. Dunkley Company, Appellee, No. 2915 (with the exception of the respective names of the parties defendant in each of said cases); and it is stipulated that the bill of complaint, answer to the bill of complaint, opinion of the Court rendered Monday, December 4, 1916, and the interlocutory decree filed December 8, 1916, as the same appear in the transcript of record in said case of Central California Canneries Company, a Corporation, et al, Appellants, vs. Dunkley Company, Appellee, No. 2915, shall be and constitute a part of the transcript of record herein, and the same may be referred to for the terms of said bills of complaint, answers thereto, opinions of the Court and interlocutory decrees.

III. That all of the exhibits, documentary, photographic and mechanical, filed with the clerk upon the hearing of said motions, may be withdrawn from the files of the above-entitled court, and of the clerk thereof, and by said clerk be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, as a part of said record on this appeal, said exhibits including in part said evidence, proofs and records in the above recitals enumerated. That in order to have available the numerous photographic exhibits attached to said affidavits without the necessity of reprinting the [311] same, the clerk of the above-

entitled court be requested to bind said affidavits in a convenient form, arranging them alphabetically, and transmit the same with the other said exhibits.

IV. That said transcript of record on appeal shall include a copy of:

1. Order of the above-entitled court made and entered on or about the 6th day of April, 1916, that said cause stand submitted.

2. Motion by defendant in each of the above cases, entitled "Application for a Request to the Circuit Court of Appeals to recall its Mandate, and for a Rehearing", filed on or about the 14th day of October, 1918.

3. Motion by plaintiff made in each of the above cases, and entitled "Motion made pursuant to Permission given in the Mandate of the United States Circuit Court of Appeals, and filed on or about the 17th day of July, 1918.

4. The affidavits hereinabove listed (exclusive of photographic exhibits).

5. Opinion of the Court, filed August 22, 1921.

6. Order of the Court, entered August 22, 1921.

7. Petition of Hunt Brothers Company for order allowing appeal.

8. Assignment of errors, this appeal.

9. Order allowing appeal of Hunt Brothers Company.

10. Bond on this appeal.

11. Citation, this appeal.

12. This stipulation.

Nothing in this stipulation or in any other stipulation contained shall be construed as a waiver by plaintiffs of any [312] right of plaintiffs to move to dis-

miss said appeals or a waiver of any right plaintiffs may have.

KEMPER B. CAMPBELL,  
FREDERICK S. LYON,  
WILLIAM J. CARR,  
FRANCIS J. HENEY,  
Solicitors for Defendants.  
FRED L. CHAPPELL and  
W. A. RICHARDSON,  
Solicitors for Plaintiffs.

December 28, 1921.

It is so ordered.

WM. C. VAN FLEET,  
Judge.

[Endorsed]: Filed Dec. 29, 1921. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [313]

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In the Southern Division of the United States District  
Court, in and for the Northern District of Cali-  
fornia, Second Division.

No. 211—IN EQUITY.

DUNKLEY COMPANY, Plaintiff,  
vs.

HUNT BROTHERS COMPANY, Defendant.

**Certificate of Clerk U. S. District Court to Tran-  
script of Record on Appeal.**

I, Walter B. Maling, Clerk of the District Court  
of the United States, in and for the Northern District  
of California, do hereby certify the foregoing three

hundred thirteen (313) pages numbered from 1 to 313, inclusive, to be full, true and correct copies of the record and proceedings as enumerated in the praecipe for transcript of record, as the same remain on file and of record in the above-entitled cause and similar causes, excepting therefrom the original exhibits (which by order of Court are allowed to be withdrawn and transmitted herewith as a part of this record), and that the same constitutes the record on appeal to the United States Circuit Court of Appeals, for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$120.90; that said amount was paid by the defendants; and that the original citations issued herein are hereunto annexed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 5th day of January, A. D. 1922.

[Seal] WALTER B. MALING,  
Clerk United States District Court for the Northern  
District of California. [314]

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### Citation on Appeal.

UNITED STATES OF AMERICA,—ss.

The President of the United States, to Dunkley Company (now known as Michigan Canning & Machinery Company) and Dunkley Company,  
GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San

Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, wherein Central California Canneries Company, is appellant, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 20th day of September, A. D. 1921.

WM. C. VAN FLEET,  
United States District Judge. [315]

Due service and receipt of a copy of the within citation is hereby admitted the Sept. 21st, 1921.

FRED L. CHAPPELL,  
W. A. RICHARDSON,  
Attorneys for Plaintiffs.

[Endorsed]: No. 201. United States District Court For the Northern District of California. Central California Canneries Co., Appellant, vs. Dunkley Co. etc. et al. Citation on Appeal. Filed Sept. 22, 1921. Walter B. Maling, Clerk.

**Citation on Appeal.**

UNITED STATES OF AMERICA,—ss.

The President of the United States, to Dunkley Company (now known as Michigan Canning & Machinery Company) and Dunkley Company,  
GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, wherein Griffin & Skelley Company, is appellant, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 20th day of September, A. D. 1921.

WM. C. VAN FLEET,  
United States District Judge. [316]

Due service and receipt of a copy of the within citation is hereby admitted Sept. 21, 1921.

FRED L. CHAPPELL,  
W. A. RICHARDSON,  
Attorneys for Plaintiffs.



[Endorsed]: No. 202. United States District Court, For the Northern District of California. Griffin & Skelley Company, Appellant, vs. Dunkley Co. etc. et al. Citation on Appeal. Filed Sept. 22, 1921. Walter B. Maling, Clerk.

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### **Citation on Appeal.**

UNITED STATES OF AMERICA,—ss.

The President of the United States, to Dunkley Company (now known as Michigan Canning & Machinery Company) and Dunkley Company,  
GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, wherein J. C. Ainsley Packing Company, is appellant, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California this 20th day of September, A. D. 1921.

WM. C. VAN FLEET,  
United States District Judge.

Due service and receipt of a copy of the within citation is hereby admitted Sept. 21, 1921.

FRED L. CHAPPELL,  
W. A. RICHARDSON,  
Attorneys for Plaintiffs.

[Endorsed]: No. 205-Eq. United States District Court For the Northern District of California. J. C. Ainsley Packing Co., Appellant, vs. Dunkley Co., etc. et al. Citation on Appeal. Filed Sept. 22, 1921. Walter B. Maling, Clerk. [317]

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**Citation on Appeal.**

UNITED STATES OF AMERICA,—ss.

The President of the United States, to Dunkley Company (now known as Michigan Canning & Machinery Company) and Dunkley Company,  
GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, wherein Anderson-Barngrover Manufacturing Company, is appellant, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 20th day of September, A. D. 1921.

WM. C. VAN FLEET,  
United States District Judge.

Due service and receipt of a copy of the within citation is hereby admitted Sept. 21, 1921.

FRED L. CHAPPELL,  
W. A. RICHARDSON,  
Attorneys for Plaintiffs.

[Endorsed]: No. 206. United States District Court for the Northern District of California. Anderson-Barngrover Mnfg. Co., Appellant, vs. Dunkley Co. etc. et al. Citation on Appeal. Filed Sept. 22d, 1921. Walter B. Maling, Clerk. [318]

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### **Citation on Appeal.**

UNITED STATES OF AMERICA,—ss.  
The President of the United States, to Dunkley Company (now known as Michigan Canning & Machinery Company) and Dunkley Company,  
GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, wherein Golden Gate Packing Com-

pany is appellant, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 20th day of September, A. D. 1921.

WM. C. VAN FLEET,  
United States District Judge.

Due service and receipt of a copy of the within citation is hereby admitted Sept. 21, 1921.

FRED L. CHAPPELL,  
W. A. RICHARDSON,  
Attorneys for Plaintiffs.

[Endorsed]: No. 209. United States District Court for the Northern District of California. Golden Gate Packing Co., Appellant, vs. Dunkley Co. etc. et al. Citation on Appeal. Filed Sept. 22, 1921. Walter B. Maling, Clerk. [319]

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### **Citation on Appeal.**

UNITED STATES OF AMERICA,—ss.

The President of the United States, to Dunkley Company (now known as Michigan Canning & Machinery Company) and Dunkley Company,  
GREETING:

You are hereby cited and admonished to be and

appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, wherein J. F. Pyle & Son, Inc., is appellant, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 20th day of September, A. D. 1921.

WM. C. VAN FLEET,  
United States District Judge.

Due service and receipt of a copy of the within citation is hereby admitted Sept. 21, 1921.

FRED L. CHAPPELL,  
W. A. RICHARDSON,  
Attorneys for Plaintiffs.

[Endorsed]: No. 210. United States District Court for the Northern District of California. J. F. Pyle & Son, Inc., Appellant, vs. Dunkley Co. etc. et al. Citation on Appeal. Filed Sept. 22d, 1921. Walter B. Maling, Clerk. [320]

**Citation on Appeal.**

UNITED STATES OF AMERICA,—ss.

The President of the United States, to Dunkley Company (now known as Michigan Canning & Machinery Company), and Dunkley Company,  
GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, wherein Hunt Brothers Company is appellant, and you are appellees, to show cause, if any there by, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 20th day of September, A. D. 1921.

WM. C. VAN FLEET,  
United States District Judge.

Due service and receipt of a copy of the within citation is hereby admitted Sept. 21, 1921.

FRED L. CHAPPELL,  
W. A. RICHARDSON,  
Attorneys for Plaintiffs.



[Endorsed]: No. 211. United States District Court for the Northern District of California. Hunt Brothers Company, Appellant, vs. Dunkley Co. etc. et al. Citation on Appeal. Filed Sept. 22d, 1921. Walter B. Maling, Clerk. [321]

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**Citation on Appeal.**

UNITED STATES OF AMERICA,—ss.

The President of the United States, to Dunkley Company (now known as Michigan Canning & Machinery Company) and Dunkley Company,  
GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, wherein Sunlit Fruit Company is appellant, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 20th day of September, A. D. 1921.

WM. C. VAN FLEET,  
United States District Judge.

Due service and receipt of a copy of the within citation is hereby admitted Sept. 21, 1921.

FRED L. CHAPPELL,  
W. A. RICHARDSON,  
Attorneys for Plaintiffs.

[Endorsed]: No. 212. United States District Court for the Northern District of California. Sunlit Fruit Co., Appellant, vs. Dunkley Co. etc. et al. Citation on Appeal. Filed Sept. 22, 1921. Walter B. Maling, Clerk. [322]

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[Endorsed]: No. 3824. United States Circuit Court of Appeals for the Ninth Circuit. Central California Canneries Company, Appellant, vs. Dunkley Company (Now Known as Michigan Canning & Machinery Company) and Dunkley Company, Appellees. Griffin & Skelley Company, Appellant, vs. Dunkley Company (Now Known as Michigan Canning & Machinery Company) and Dunkley Company, Appellees. J. C. Ainsley Packing Company, Appellant, vs. Dunkley Company (Now Known as Michigan Canning & Machinery Company) and Dunkley Company, Appellees. Anderson-Barngrover Manufacturing Company, Appellant, vs. Dunkley Company (Now Known as Michigan Canning & Machinery Company) and Dunkley Company, Appellees. Golden Gate Packing Company, Appellant, vs. Dunkley Company (Now Known as Michigan Canning & Machinery Company) and Dunkley Company, Appellees. J. F. Pyle & Son, Inc., Appellant, vs. Dunkley Company (Now Known as Michigan

Canning & Machinery Company) and Dunkley Company, Appellees. Hunt Brothers Company, Appellant, vs. Dunkley Company (Now Known as Michigan Canning & Machinery Company) and Dunkley Company, Appellees. Sunlit Fruit Company, Appellant, vs. Dunkley Company (Now Known as Michigan Canning & Machinery Company) and Dunkley Company, Appellees. Transcript of Record. Upon Appeals from the Southern Division of the United States District Court for the Northern District of California, Second Division.

Filed January 5, 1922.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By PAUL P. O'BRIEN,  
Deputy Clerk.

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In the United States Circuit Court of Appeals for  
the Ninth Circuit.

3824.

HUNT BROTHERS COMPANY, Appellant,  
vs.

DUNKLEY COMPANY, Appellee.

CENTRAL CALIFORNIA CANNERIES  
COMPANY, Appellant,  
vs.

DUNKLEY COMPANY, Appellee.

GRIFFIN & SKELLEY COMPANY,  
Appellant,

vs.

DUNKLEY COMPANY, Appellee.

J. C. AINSLEY PACKING COMPANY,  
Appellant,

vs.

DUNKLEY COMPANY, Appellee.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY, Appellant,

vs.

DUNKLEY COMPANY, Appellee.

GOLDEN GATE PACKING COMPANY,  
Appellant,

vs.

DUNKLEY COMPANY, Appellee.

J. F. PYLE & SON, INC., Appellant,

vs.

DUNKLEY COMPANY, Appellee.

SUNLIT FRUIT COMPANY, a Corporation,  
Appellant,

vs.

DUNKLEY COMPANY, Appellee.

**Stipulation re Record on Appeal.**

IT IS HEREBY STIPULATED AND  
AGREED by and between the parties to the above-  
entitled suits that the respective appeals herein are

to be docketed and heard upon one and the same record, and that the records in all of the above-entitled cases are identical.

It is stipulated that exhibits, documentary, photographic and mechanical, filed in the court below in the matter which was the subject of this appeal, and transmitted to the clerk of this court, shall constitute and be considered a part of the record on appeal in said cases, and shall be used and referred to by the parties on the hearing of said appeals, and that the records of this court, and the complete files thereof, in the case of Central California Canneries Company, Appellant, vs. Dunkley Company, Appellee, No. 2915; and in the case of Dunkley Company and Michigan Canning & Machinery Company, Appellants, vs. Pasadena Canning Company and Geo. E. Grier, Appellees, No. 3316, including all proofs, files, records and exhibits in said cases, shall be deemed a part of the record on this appeal and need not be re-printed.

Dated, Dec. 28, 1921.

FREDERICK S. LYON,  
KEMPER B. CAMPBELL,  
W. J. CARR,  
FRANCIS J. HENEY,  
Solicitors for Appellants.  
FRED L. CHAPPELL,  
W. A. RICHARDSON,  
Solicitors for Appellee.

[Endorsed]: 3824. In the United States Circuit Court of Appeals for the Ninth Circuit. Hunt Brothers Company, Appellant, vs. Dunkley Company,

Appellee. Stipulation re Record on Appeal. Filed Jan. 5, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

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In the United States Circuit Court of Appeals for  
the Ninth Circuit.

EQUITY—No. 201.

DUNKLEY COMPANY,

Plaintiff-Appellee,

vs.

CENTRAL CALIFORNIA CANNERIES

COMPANY, Defendant-Appellant.

**Order Extending Time to and Including January 10,  
1922, to File Record and Docket Cause.**

AND NOW UPON MOTION of Frederick S. Lyon, one of the attorneys for defendant-appellant, and good cause appearing therefor,—

IT IS HEREBY ORDERED that the time within which defendant-appellant shall docket its appeal herein and file the record thereof with the clerk of this court be and the same is hereby enlarged and extended to January 10, 1922.

Dated, San Francisco, California, October 18, 1921.

WM. B. GILBERT,

United States Circuit Judge.

[Endorsed]: No. 3824. Equity—No. 201. In the United States Circuit Court of Appeals for the Ninth Circuit. Dunkley Company, Plaintiff-Appellee, vs. Central California Canneries Company, Defendant-



Appellant. Order Extending Time to Docket Appeal and File Record With the Clerk of This Court. Filed Oct. 18, 1921. F. D. Monckton, Clerk. Re-filed Jan. 5, 1922. F. D. Monckton, Clerk.

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In the United States Circuit Court of Appeals for  
the Ninth Circuit.

EQUITY—No. 202.

DUNKLEY COMPANY, Plaintiff-Appellee,  
vs.

GRIFFIN & SKELLEY COMPANY,  
Defendant-Appellant.

**Order Extending Time to and Including January 10,  
1922, to File Record and Docket Cause.**

AND NOW UPON MOTION of Frederick S. Lyon, one of the attorneys for defendant-appellant, and good cause appearing therefor,—

IT IS HEREBY ORDERED that the time within which defendant-appellant shall docket its appeal herein and file the record thereof with the clerk of this court be and the same is hereby enlarged and extended to January 10, 1922.

Dated, San Francisco, California, October 18, 1921.

WM. B. GILBERT,  
United States Circuit Judge.

[Endorsed]: Equity—No. 202. In the United States Circuit Court of Appeals for the Ninth Circuit. Dunkley Company, Plaintiff-Appellee, vs. Griffin & Skelley Company, Defendant-Appellant. Order Ex-

tending Time to Docket Appeal and File Record  
With the Clerk of This Court. Filed Oct. 18, 1921.  
F. D. Monckton, Clerk. Re-filed Jan. 5, 1922. F. D.  
Monckton, Clerk.

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In the United States Circuit Court of Appeals for  
the Ninth Circuit.

EQUITY—No. 205.

DUNKLEY COMPANY, Plaintiff-Appellee,  
vs.

J. C. AINSLEY PACKING COMPANY,  
Defendant-Appellant.

**Order Extending Time to and Including January 10,  
1922, to File Record and Docket Cause.**

AND NOW UPON MOTION of Frederick S.  
Lyon, one of the attorneys for defendant-appellant,  
and good cause appearing therefor,—

IT IS HEREBY ORDERED that the time within  
which defendant-appellant shall docket its appeal  
herein and file the record thereof with the clerk of  
this court be and the same is hereby enlarged and  
extended to January 10, 1922.

Dated, San Francisco, California, October 18, 1921.

WM. B. GILBERT,  
United States Circuit Judge.

[Endorsed: No. 3824. Equity—No. 205. In the  
United States Circuit Court of Appeals for the Ninth  
Circuit. Dunkley Company, Plaintiff-Appellee, vs.  
J. C. Ainsley Packing Company, Defendant-Appel-  
lant. Order Extending Time to Docket Appeal and

File Record With the Clerk of This Court. Filed Oct. 18, 1921. F. D. Monckton, Clerk. Re-filed Jan. 5, 1922. F. D. Monckton, Clerk.

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In the United States Circuit Court of Appeals for  
the Ninth Circuit.

EQUITY—No. 206.

DUNKLEY COMPANY, Plaintiff-Appellee,  
vs.

ANDERSON-BARNGROVER MANU-  
FACTURING COMPANY,  
Defendant-Appellant.

**Order Extending Time to and Including January 10,  
1922, to File Record and Docket Cause.**

AND NOW UPON MOTION of Frederick S. Lyon, one of the attorneys for defendant-appellant, and good cause appearing therefor,—

IT IS HEREBY ORDERED that the time within which defendant-appellant shall docket its appeal herein and file the record thereof with the clerk of this court be and the same is hereby enlarged and extended to January 10, 1922.

Dated, San Francisco, California, October 18, 1921.

WM. B. GILBERT,  
United States Circuit Judge.

[Endorsed]: No. 3824. Equity—No. 206. In the United States Circuit Court of Appeals for the Ninth Circuit. Dunkley Company, Plaintiff-Appellee, vs. Anderson-Barngrover Manufacturing Company, De-

defendant-Appellant. Order Extending Time to Docket Appeal and File Record With the Clerk of This Court. Filed Oct. 18, 1921. F. D. Monckton, Clerk. Re-filed Jan. 5, 1922. F. D. Monckton, Clerk.

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In the United States Circuit Court of Appeals for  
the Ninth Circuit.

EQUITY—No. 209.

DUNKLEY COMPANY, Plaintiff-Appellee,  
vs.

GOLDEN GATE PACKING COMPANY,  
Defendant-Appellant.

**Order Extending Time to and Including January 10,  
1922, to File Record and Docket Cause.**

AND NOW UPON MOTION of Frederick S. Lyon, one of the attorneys for defendant-appellant, and good cause appearing therefor,—

IT IS HEREBY ORDERED that the time within which defendant-appellant shall docket its appeal herein and file the record thereof with the clerk of this court be and the same is hereby enlarged and extended to January 10, 1922.

Dated, San Francisco, California, October 18, 1921.

WM. B. GILBERT,  
United States Circuit Judge.

[Endorsed]: No. 3824. Equity—No. 209. In the United States Circuit Court of Appeals for the Ninth Circuit. Dunkley Company, Plaintiff-Appellee, vs. Golden Gate Packing Company, Defendant-Appel-

lant. Order Extending Time to Docket Appeal and File Record With the Clerk of This Court. Filed Oct. 18, 1921. F. D. Monckton, Clerk. Re-filed Jan. 5, 1922. F. D. Monckton, Clerk.

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In the United States Circuit Court of Appeals for  
the Ninth Circuit.

EQUITY—No. 210.

DUNKLEY COMPANY, Plaintiff-Appellee,  
vs.

J. F. PYLE & SONS, INC.,  
Defendant-Appellant.

**Order Extending Time to and Including January 10,  
1922, to File Record and Docket Cause.**

AND NOW UPON MOTION of Frederick S. Lyon, one of the attorneys for defendant-appellant, and good cause appearing therefor,—

IT IS HEREBY ORDERED that the time within which defendant-appellant shall docket its appeal herein and file the record thereof with the clerk of this court be and the same is hereby enlarged and extended to January 10, 1922.

Dated, San Francisco, California, October 18, 1921.

WM. B. GILBERT,  
United States Circuit Judge.

[Endorsed]: No. 3824. Equity—No. 210. In the United States Circuit Court of Appeals for the Ninth Circuit. Dunkley Company, Plaintiff-Appellee, vs. J. F. Pyle & Sons, Inc., Defendant-Appellant.

Order Extending Time to Docket Appeal and File Record With the Clerk of This Court. Filed Oct. 18, 1921. F. D. Monckton, Clerk. Re-filed Jan. 5, 1922. F. D. Monckton, Clerk.

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In the United States Circuit Court of Appeals for  
the Ninth Circuit.

EQUITY—No. 211.

DUNKLEY COMPANY, Plaintiff-Appellee,

vs.

HUNT BROTHERS COMPANY,

Defendant-Appellant.

**Order Extending Time to and Including January 10,  
1922, to File Record and Docket Cause.**

AND NOW UPON MOTION of Frederick S. Lyon, one of the attorneys for defendant-appellant, and good cause appearing therefor,—

IT IS HEREBY ORDERED that the time within which defendant-appellant shall docket its appeal herein and file the record thereof with the clerk of this court be and the same is hereby enlarged and extended to January 10, 1922.

Dated, San Francisco, California, October 18, 1921.

WM. B. GILBERT,

United States Circuit Judge.

[Endorsed]: No. 3824. Equity—No. 211. In the United States Circuit Court of Appeals for the Ninth Circuit. Dunkley Company, Plaintiff-Appellee, vs. Hunt Brothers Company, Defendant-Appellant. Order Extending Time to Docket Appeal and File



Record With the Clerk of This Court. Filed Oct. 18, 1921. F. D. Monckton, Clerk. Re-filed Jan. 5, 1922. F. D. Monckton, Clerk.

---

In the United States Circuit Court of Appeals for  
the Ninth Circuit.

EQUITY—No. 212.

DUNKLEY COMPANY, Plaintiff-Appellee,  
vs.

SUNLIT FRUIT COMPANY,  
Defendant-Appellant.

**Order Extending Time to and Including January 10,  
1922, to File Record and Docket Cause.**

AND NOW UPON MOTION of Frederick S. Lyon, one of the attorneys for defendant-appellant, and good cause appearing therefor,—

IT IS HEREBY ORDERED that the time within which defendant-appellant shall docket its appeal herein and file the record thereof with the clerk of this court be and the same is hereby enlarged and extended to January 10, 1922.

Dated, San Francisco, California, October 18, 1921.

WM. B. GILBERT,

United States Circuit Judge.

[Endorsed]: No. 3824. Equity No. 212. In the United States Circuit Court of Appeals for the Ninth Circuit. Dunkley Company, Plaintiff-Appellee, vs. Sunlit Fruit Company, Plaintiff-Appellant. Order Extending Time to Docket Appeal and File Record With the Clerk of This Court. Filed Oct. 18, 1921. F. D. Monckton, Clerk. Re-filed Jan. 5, 1922. F. D. Monckton, Clerk.

Exhibit "A."

(Exhibits Attached to Affidavit of Thomas Brazill.)

# KALAMAZOO FOUNDRY & MACHINE CO.,

COR. CHURCH AND ELEANOR STREETS.

PHONE 55.

KALAMAZOO, MICH. Jan. 20, 1911.

to Dunkley Co.,  
 as cash.  
 BILLS NET AS RENDERED.

City.

DESCRIPTION	Order Number	No. Pieces	Weight	Hours	Price	Amount	Total
					40	0	
1 pair on can hooks	1098			15 1/2		6 30	
1 pair on			31 1/2		0 1	3 00	
							7 15
1 pair on hangers	1099			16 1/2		8 80	
							8 80
							9 15 75

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Exhibit "B."

# KALAMAZOO FOUNDRY & MACHINE CO.,

COR. CHURCH AND ELEANOR STREETS.

PHONE 55.

KALAMAZOO, MICH.

Sold to Central California Cannery Co.

TERMS CASH. Full Price  
ALL BILLS NET AS RENDERED.

0117

Date	DESCRIPTION	Order Number	No. Pieces	Weight	Hours	Price	Amount	Total
	200 lb. machine 1033				2	50	1 00	
	scissors			498 <sup>11</sup>		3 1/2	17 48	
	rock on angle iron 1029				48	50	23 00	
	machines as per tickets attached.			711		3 1/2	24 6	

966

30415      368.44  
4231      24.00  
72.77      392.44

464

POSTED.

41



## Exhibit "C."

## KALAMAZOO FOUNDRY &amp; MACHINE CO.,

COR. CHURCH AND ELEANOR STREETS.

PHONE 55.

KALAMAZOO, MICH. Mar. 8, 1914.

Sold to Dunkley Co.

Sundries,

City,

TERMS CASH.  
ALL BILLS NET AS RENDERED.

Date	DESCRIPTION	Order Number	No. Pieces	Weight	Hours	Price	Amount	Total
/1	Work on gear shields	1036			53	50	26 50	26 50
1	Planing bases	1044			6	50	3 00	
	Castings			1702		03	5 28	8 28
2	Work on angle iron.	1046			3	50	1 50	
	16. of 4 X 4 X 3/8"							
	Angle iron			1554		03 1/2	5 42	6 92
5	Work on small Castings				37	50	18 50	
	Castings			121		3 1/2	4 23	22 73
7	1 7/16" C.R. SHAPING							
	Cutting off					05	2 55	
							30	2 85

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Exhibit "D."

KALAMAZOO FOUNDRY & MACHINE CO.,

COR. CHURCH AND ELEANOR STREETS.

PHONE 55.

KALAMAZOO, MICH. MAR. 11, 1904.

to Dunkley Co.,  
Supplies,  
CASH.  
BILLS NET AS RENDERED.

DESCRIPTION	Order Number	No. Pieces	Weight	Hours	Price	Amount	Total
Work and material as per ticket attached.						1 80	1 80
Work on wood pulleys 1081			52	30		33 00	35 00
Work on chanel iron. 1085							
(Smith & Helper)				1	20	1 00	
Man only,				1		20	
Express						60	
Channels			1124	03		3 40	6 50
Work on chanel	1136			1 1/2	50		
Iron.			147	03		42	67
0 slings as per tickets attached.						9 41	9 41

C-859  
Dunkley  
Pysadena  
Dept. EXPORT  
No. 37  
Recd June 18 1904  
HAS. W. HARRIS  
Deputy Clerk

44 44  
36 50

POSTED

CH1

Exhibit "E."

# KALAMAZOO FOUNDRY & MACHINE CO.,

COR. CHURCH AND ELEANOR STREETS.

PHONE 55.

KALAMAZOO, MICH. Apr. 10, 1911.

Sold to Dunkley Co

Sundries.  
TERMS CASH.  
ALL BILLS NET AS RENDERED.

61.67

Date	DESCRIPTION	Order Number	No. Pieces	Weight	Hours	Price	Amount	Total
	Work on track irons (Rich & Helper)	1145,			1 1/2	40		
	Work on shaft,	934			3 1/2	40	1 35	
	1 3/16" C.R. Sharfing		235			04	1 10	
	Bearings as per tickets attached.			475	3 1/2		2 35	

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POSTED.

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**Exhibit "A."**

(Attached to Affidavit of Katherine H. Breen.)

Charge to <i>Mr. Breen</i> P. O. Address <i>San Francisco</i> Mark <i>100</i> Date <i>10/10/10</i>		Description <i>1 barrel of packed</i> Quantity <i>1</i> Price <i>100</i> Total <i>100</i>	
---	--	--	--

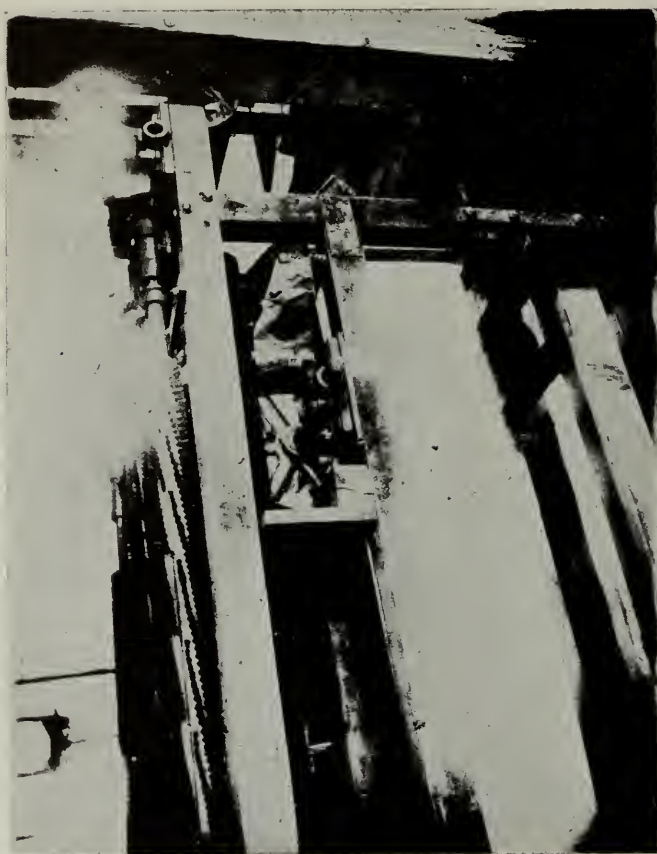


*vs. Dunkley Company.*

1123

**Dunkley's Exhibit No. 2.**

Photograph 1 of Second Machine.



1124 *Central California Canneries Company et al.*

**Dunkley's Exhibit No. 2.**

Photograph 2 of Second Machine.



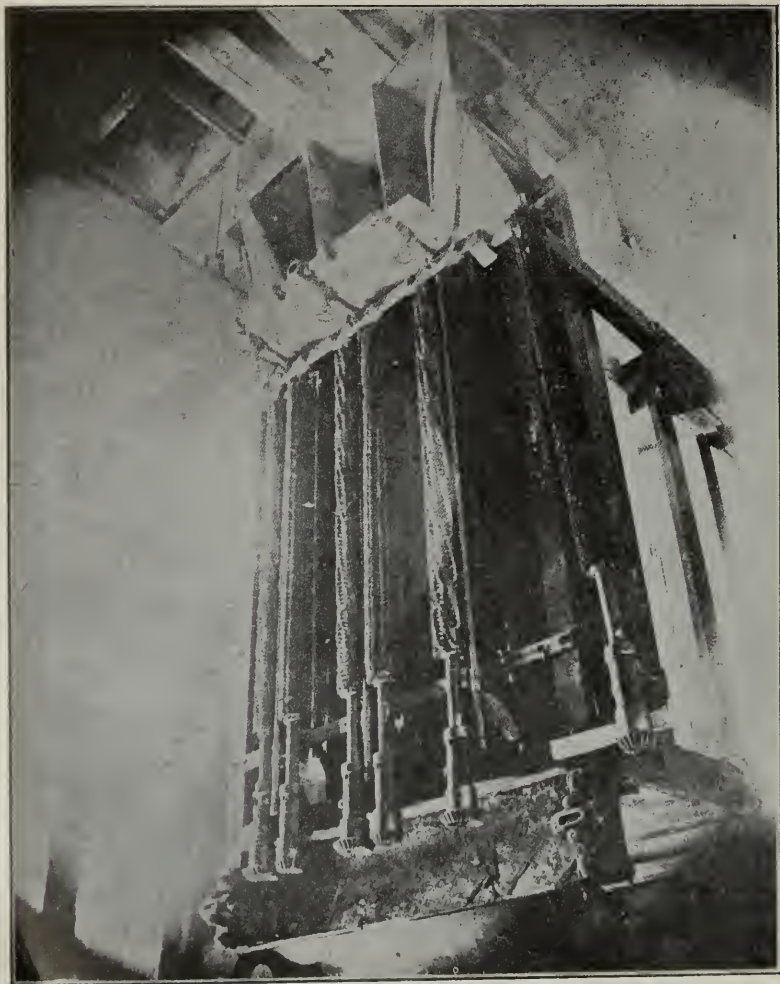


*vs. Dunkley Company.*

1125

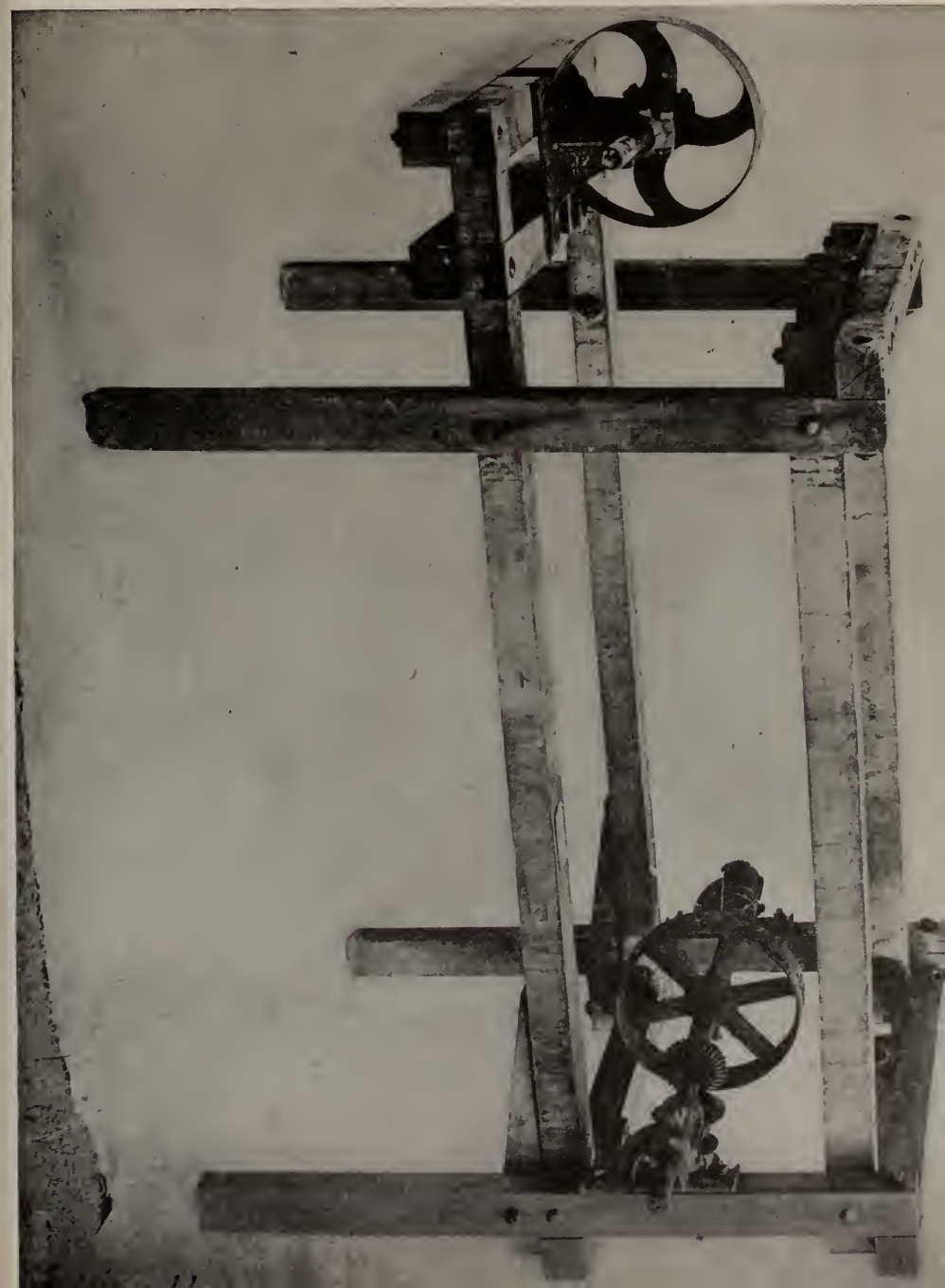
**Dunkley's Exhibit No. 2.**

Photograph 3 of Second Machine.



**Exhibit "D."**

(Attached to Supplemental Affidavit of George K.  
Brown.)





**Exhibit "E."**



Mutes Spelling Dunkley Peach.

*vs. Dunkley Company, etc. et al.*

411

### Exhibit "A."

(Attached to Affidavit of Fred J. Buckley.)

KALAMAZOO FOUNDRY & MACHINE CO.,

COR. CHURCH AND ELEANOR STREETS.

'PHONE 55.

KALAMAZOO, MICH. Jan. 20, 1911.

(10)  $\text{O}_2$  and  $\text{H}_2$  are  $\text{GO} \oplus \text{GO}$ 

Summaries,

AS CASE.  
BUT NOT AS RENDERED.

C13V.

DESCRIPTION	Order Number	No. Pieces	Weight	Hours	Price	Amount	Total
					40	0	
"off" on gun cheeks	1098			15 1/2		6 20	
gun cheeks			31 1/2		05	9 00	
							7 10
"off" on hangers	1099			16 1/2		6 60	
							8 60

4157

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5353-37

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## Exhibit "B."

## KALAMAZOO FOUNDRY &amp; MACHINE CO.,

COR. CHURCH AND ELEANOR STREETS.

PHONE 55.

KALAMAZOO, MICH. 1905

Sold to The Cannery Co.,

TERMS CASH.   
 ALL BILLS NET AS RENDERED.

OILY.

DESCRIPTION	Order Number	No. Pieces	Weight	Hours	Price	Amount	Total
Work on pump machine 1073				3	50	1 00	
Rolling			498 <sup>lb</sup>	3 1/2		17 43	
Work on angle irons 1029				40	50	20 00	
Cuslings as per							21 43
tickets attached,			711	3 1/2		24 60	

3042

41231

7277

36844

2400

39244

46431

POSTED.

C41



## Exhibit "C."

## KALAMAZOO FOUNDRY &amp; MACHINE CO.,

COR. CHURCH AND ELEANOR STREETS.

PHONE 55.

KALAMAZOO, MICH. Mar. 9, 1914.

Sold to Dunkley Co.

Sundries,

TERMS CASH.  
ALL BILLS MUST AS RENDERED.

City,

Date	DESCRIPTION	Order Number	No. Pieces	Weight	Hours	Price	Amount	Total
3/1	Work on gear shields	1036			53	50	26 50	
								26 50
1	Flaming bases	1044			6	50	3 00	
	Castings		176#			03	5 28	
								8 28
2	Work on angle iron.	1046			3	50	1 50	
	16. of 4 X 4 X 3/8"							
	Angle iron		155#			03 1/2	5 42	
		1045						6 92
5	Work on small Castings				37	50	18 50	
	Castings		121#			3 1/2	4 23	
		1074						22 73
7	1 7/16" C.R. Shafting		51#			05	2 55	
	Cutting off						30	
								2 85

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POSTED.

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## Exhibit "D."

## KALAMAZOO FOUNDRY &amp; MACHINE CO.,

COR. CHURCH AND ELEANOR STREETS.

PHONE 55.

KALAMAZOO, MICH. May 31, 1904.

to Dunkley Co.,  
Sundries,  
CASH.  
ALL BILLS NET AS RENDERED.

DESCRIPTION	Order Number	No. Pieces	Weight	Hours	Price	Amount	Total
Work and material as per ticket attached.						<u>1 80</u>	1 80
Work on wood pulleys I081				52	50	<u>25 00</u>	25 00
Work on chanel iron. I085 (Smith & Helper)				5	20	1 80	
Man only,				1		20	
Express						60	
Channels				11 1/2	03	<u>3 36</u>	6 57
Work on clamp				1 1/2	50	25	
Ch. Iron.				14 1/2	03	<u>42</u>	67
C. slings as per tickets attached.				3 1/2		<u>9 41</u>	9 41
							44 44

C-8 Egn.  
Dunkley  
Pasadena  
Sept. 37  
June 18 1908  
WAS. W. L. G. S.  
Deputy Clerk

POSTED

CH/1

Exhibit "E."

# KALAMAZOO FOUNDRY & MACHINE CO.,

COR. CHURCH AND ELEANOR STREETS.

PHONE 55.

KALAMAZOO, MICH. Aug. 10, 1911.

Sold to Dunkley Co

Summons.

TERMS CASH.  
ALL BILLS NET AS RENDERED.

Date	DESCRIPTION	Order Number	No. Pieces	Weight	Hours	Price	Amount	Total
	Work on track irons							
	(Smith & Helper)	1145,			1 1/2	60	90	90
	Work on shaft,	934			2 1/2	40	100	190
	1 1/2" C.R. Chaffling			237		05	110	300
	Castings as per							300
	tickets attached.			478	3 1/2	75	262	562
								562

*JP Mc*  
 539.06 / 11471  
 233 / 255  
 541.41 / 117.31  
*CB*

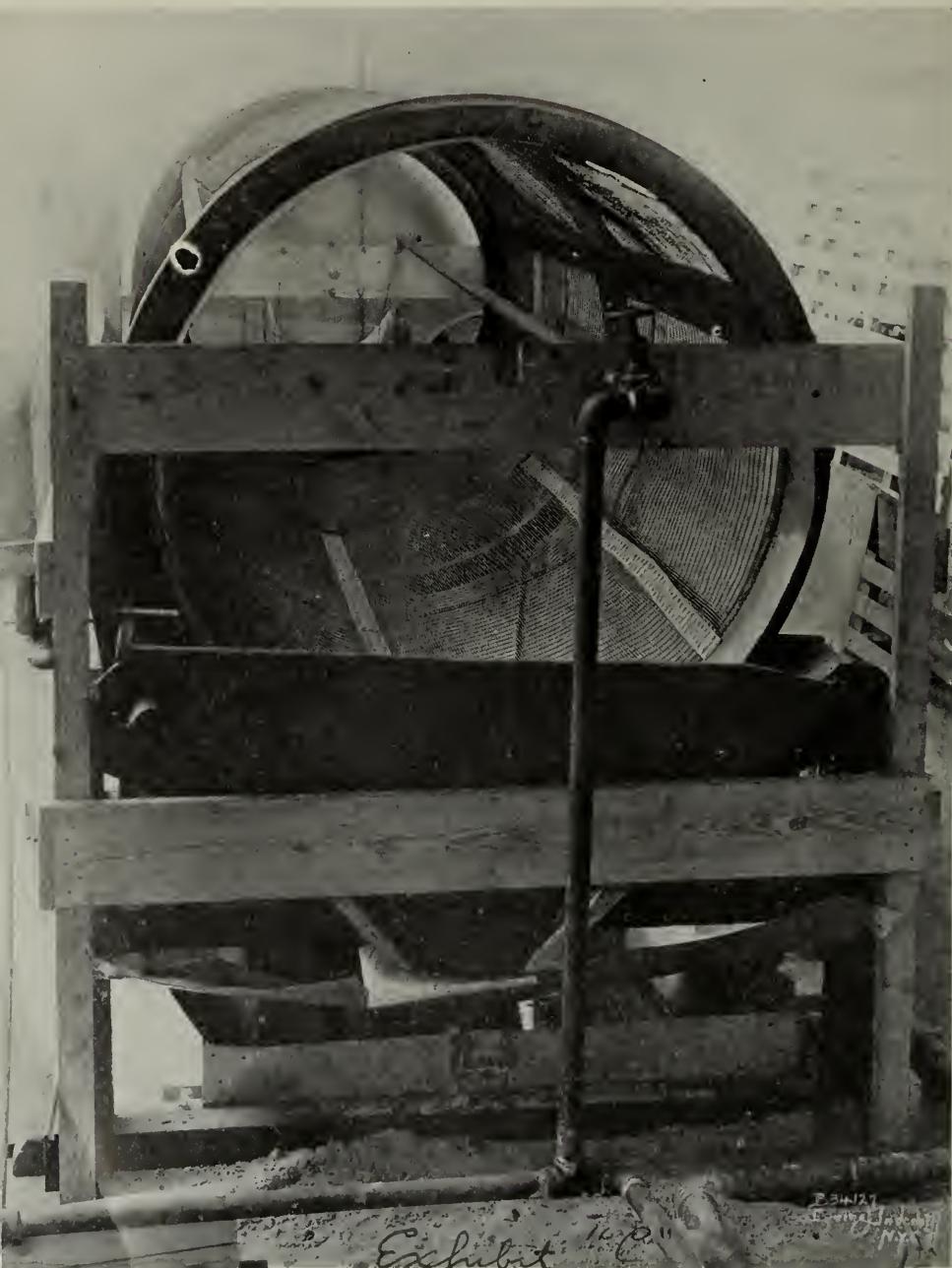
60377  
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**Exhibit "C."**

(Attached to Affidavit of Kemper B. Campbell.)



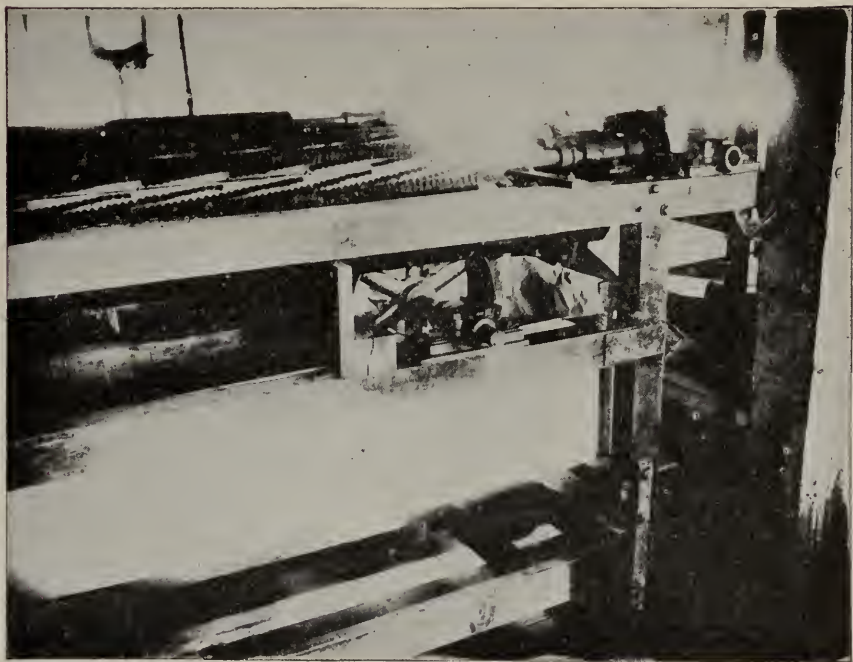
(Attached to Affidavit of Stewart Campbell.)

**Exhibit "A."**

128

476

"Dunkley's Exhibit No. 2, Photograph 1 of Second Machine."



**Exhibit "B."**

129

477

"Dunkley's Exhibit No. 2, Photograph 2 of Second Machine."

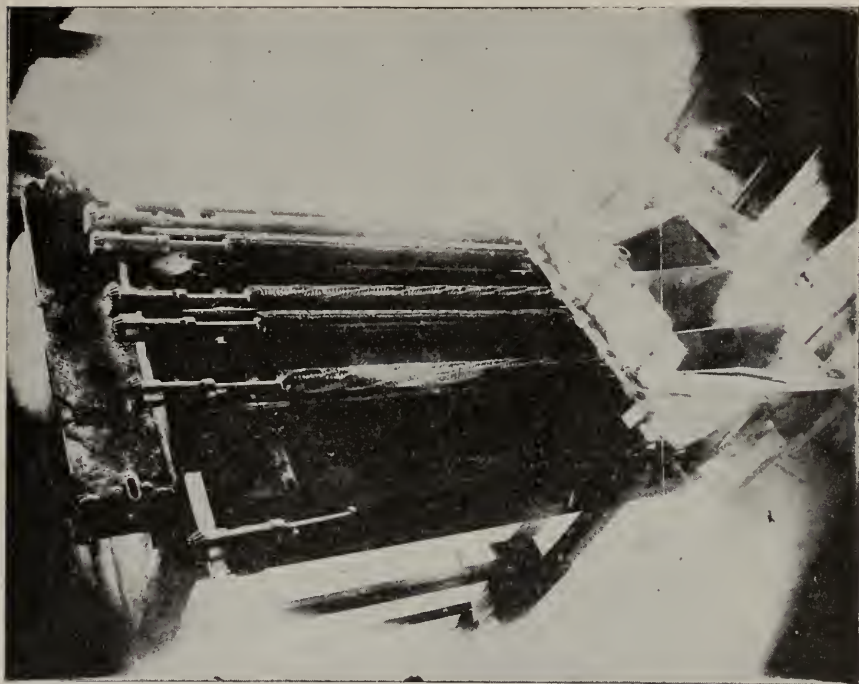


**Exhibit "C."**

130

478

"Dunkley's Exhibit No. 2, Photograph 3 of Second Machine."





**Exhibit "D."**



Exhibit "E."





Exhibit "A."

(Attached to Affidavit of Robert H. Clark.)

Adams & Smith									
Hand Exp'd. 1887									
May	17	To Wd. 3000	1887	24 30	June 21	21	26		
1887	27	Cal	1887	1 44	July	22			
Left	1		1887	52 30	Oct	26			
					Nov	23			
The Drunkley Co.									
1888									
May	12	To Wd. 3000	1888	12 75	June 5	21	26	1200	
Dec	16	Cal	1888	48 75	July	1			
	31		1888	1 88	July	16			
1888	31		1888	15 30	June	13			
Apr	20		1888	20 00	July	1			
	29		1888	11 10	Oct	31			
	36		1888	15	May	17			
	30		1888	30 00	July	16			
May	21		1888		Oct	16			
June	30		1888	1 50					
Aug	11		1888	3 50					
	31		1888	4 00					
Jan	30		1888	3 75					
Mar	31		1888	5 75					
May	20		1888	13 00					
Aug	20		1888						
Left	1		1888						
	30		1888						
	31		1888						

Exhibit "B."

Philips & Gagnier

1914

Dec 31 1914

1915

1892 200

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Dunkley Co

1914

Dec 31 1914

Dec 31 1915

Jan 31

Mar 31

April 30

May 31

June 30

July 31

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# THE TRIBUNE-MES

Vol. 9 No. 16

SOUTH HAVEN, MICHIGAN, FRIDAY, JUNE 17, 1904

## DOES THIS FIT YOU? A SPECIAL EXCURSION TRIP

Next Sunday, June 20th, the White Fleet City of South Haven will pay her first visit to the Twin Cities, making a special excursion trip.

The boat will leave South Haven at 9:30 a. m., and, returning, will have St. Joseph at 3 p. m., giving excursionists four hours or more in the city, where they will be met by a motor launch, and will be taken to the hotel. The vessel will be put to special use for the occasion, and excursionists will be treated to a special light ride on the beautiful lake and turned to the water's edge.

Over 1000 persons were on board, mostly women and children, of whom it is reported that at least 500 perished, including the pastor of the church, Rev. Geo. C. F. Hays, and his entire family.

Latest News.

In their effort, men, women and children were on board, mostly women and children, of whom it is reported that at least 500 perished, including the pastor of the church, Rev. Geo. C. F. Hays, and his entire family.

## STEAMER BURNED 500 PERISHED

Special Telegram to The Tribune.

New York, June 15.—The Steamship General Slocum, with a Sunday school excursion from St. Mary's, Germia, LaFayette, Church, caught fire in the Essex River, off H. P. G. this morning and burned to the water's edge.

The boat was beached on North Brother Island, but it will be before the fire in the hold is out, and the bodies can be recovered.

The name of the pastor is Rev. Geo. C. F. Hays, who escaped.

Capt. Wm. VanSchaick, who commanded the Slocum was arrested.

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Latest News.

In their effort, men, women and children were on board, mostly women and children, of whom it is reported that at least 500 perished, including the pastor of the church, Rev. Geo. C. F. Hays, and his entire family.

## RETURNED FROM A TRIP TO MISSISSIPPI

From Tuesday's Daily.

Lowell, Mass., June 15.—A party of four, consisting of a lady, her husband, and two children, have returned from a trip to Mississippi, Tennessee, Kentucky and Illinois, having spent the summer in the South.

The party, consisting of a lady, her husband, and two children, have returned from a trip to Mississippi, Tennessee, Kentucky and Illinois, having spent the summer in the South.

## NEWS FROM THE COUNTY COURTS

Special Correspondence to The Tribune.

East of John E. Ferguson, bail agent, was arrested on a charge of conspiracy to defraud.

East of John E. Ferguson, bail agent, was arrested on a charge of conspiracy to defraud.

## MALE CHORUS FRIDAY EVENING

The male chorus Friday evening will give a concert at the Lyceum.

The male chorus Friday evening will give a concert at the Lyceum.

## LEGAL NOTICE

Notice is hereby given that the undersigned, being a duly qualified and licensed attorney at law, will act as the legal representative of the estate of the late John E. Ferguson, deceased, in the matter of his estate.

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## 4E GOT SAD NEWS OF HER BROTHER

From Tuesday's Daily.

Wm. Sp. on 1 received a telegram yesterday afternoon, announcing the death of her brother, Mr. J. Smith, at the home of his brother, J. Smith, at 8:45 p. m. He was 45 years of age and unmarried.

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## ABREITER SOCIETY

The Abreiter Society will give a concert at the Lyceum.

The Abreiter Society will give a concert at the Lyceum.

## SEVERAL CHANGES IN THRUONE OFFICE

From Tuesday's Daily.

The resignation of Dr. O. A. Dean as Editor of The Tribune was accepted by the board of directors at a meeting Saturday afternoon. He is still a member of the board, and retains his interest in the business. He will take a vacation for a short time before deciding upon a future course.

The directors have taken no action as to choosing his successor, or as to the successor of Mr. Smith, but for the present the editorial department will be looked after by Mr. L. L. Crouther, who has been connected with the paper for over a year and Mr. A. R. Hays, who has been connected with the paper for over a year.

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## MR. GEO. W. KRIEGER LOST \$200 IN BILLS

From Tuesday's Daily.

Geo. W. Krieger, mail carrier, lost a building similar to the one he is now building, valued at \$200, on the day, to lose his pocket book containing about \$200 in bills of \$100 and \$50.

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## LEGAL NOTICE

Notice is hereby given that the undersigned, being a duly qualified and licensed attorney at law, will act as the legal representative of the estate of the late John E. Ferguson, deceased, in the matter of his estate.

Notice is hereby given that the undersigned, being a duly qualified and licensed attorney at law, will act as the legal representative of the estate of the late John E. Ferguson, deceased, in the matter of his estate.



(Attached to Affidavit of Clyde M. Funk.)

[illegible]



Exhibit "B."

1912

Phelps & Weyburn

1912

Oct 31 To Balance 1000.00

1914

Trumbull Co. L. H. Green, Mch.

Oct 31 To Balance

531

744.07

Dec

1

24

1914

Dec 31 To Balance

531

744.07

Dec

1

24

1914

1915

Jan 31

531

744.07

Dec

1

24

1914

Mar 31

531

744.07

Dec

1

24

1914

Apr 23

531

744.07

Dec

1

24

1914

May 26

531

744.07

Dec

1

24

1914

" 13

531

744.07

Dec

1

24

1914

June 27

531

744.07

Dec

1

24

1914

29

531

744.07

Dec

1

24

1914

July 31

531

744.07

Dec

1

24

1914

Sept 14

531

744.07

Dec

1

24

1914

Oct 31

531

744.07

Dec

1

24

1914

Nov 18

531

744.07

Dec

1

24

1914

Dec 24

531

744.07

Dec

1

24

1914

Exhibit "C."

Clark Engine & Boiler Co. 6014 1/2 St. N.W. Wash. D.C. 20004		DATE ORDERED _____ DATE SHIPPED _____	
ORDER NO. _____ PURCHASE ORDER NO. _____		DATE PAID _____	
TO ORDER OF _____ TERMS _____		DATE PAID _____	
MARK _____ VIS _____		PRICE _____	
CARE _____ SHIPPED BY _____		PRICE _____	
QUANTITY _____ DESCRIPTION _____		PRICE _____	

695

331

Apr. 30, 1903.

The Dunkley Co.,

City.

1/2" steel	3 1/2'	\$10.50
1" galvanized steel	5	65
1" 2" x 3" studs with nuts	7	2.87
1/2" rubber packing	166 lb.	1.42
1/2" screws complete	16	30
10 hours work	50¢ hr.	5.00
" " " "		3.50
" " " "		6.50
" " " "		4.50
		\$48.90

and invoice attached

\$48.90

We attach hereto a copy of the charge made to us for galvanizing. We  
 advise you, however, only what it cost us. Please return the  
 invoice from the Union Galvanizing Co., by return mail.

462

131

The Dunkley Co.,

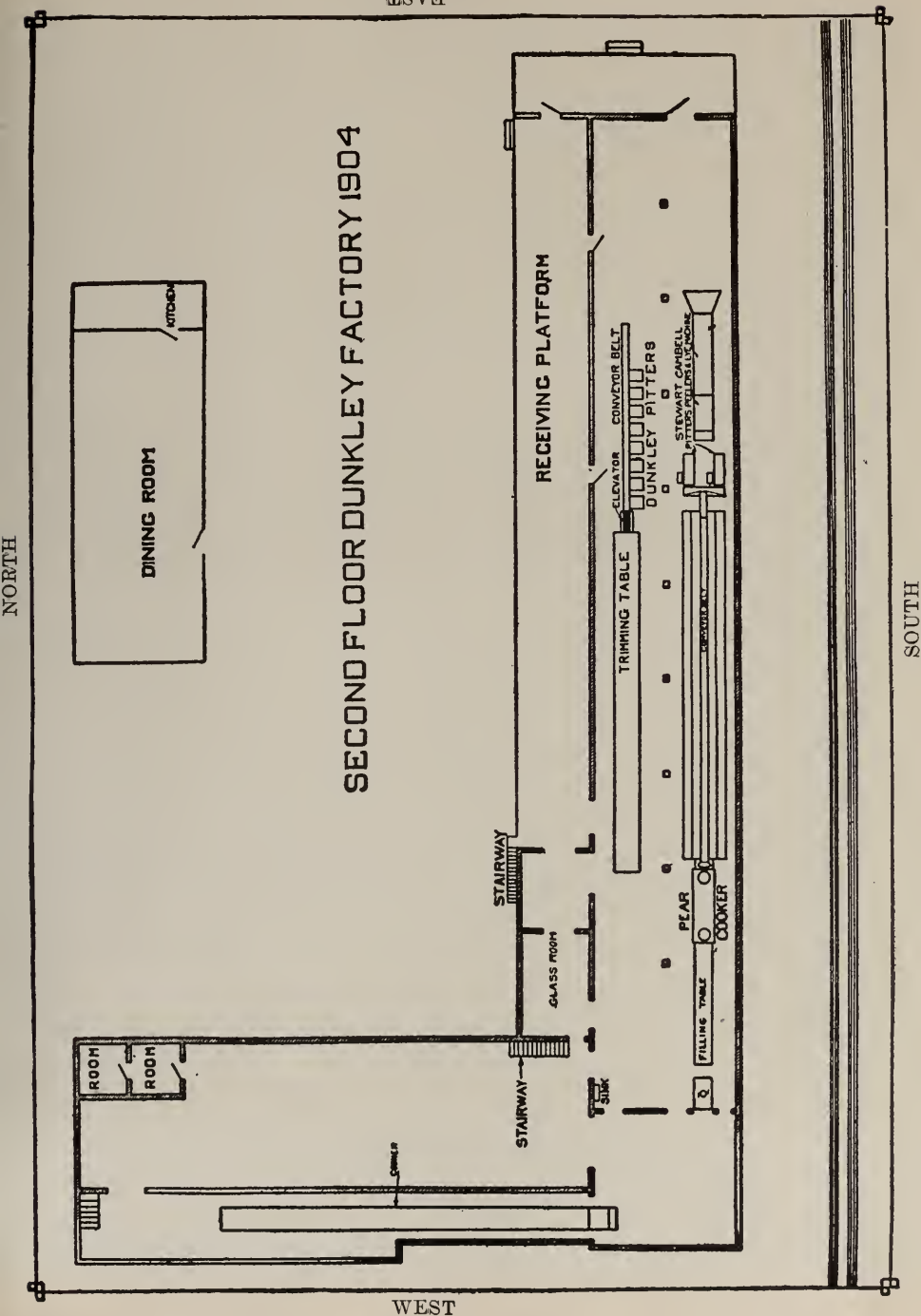
City, Cal.

Very truly yours,

The Dunkley Co.,

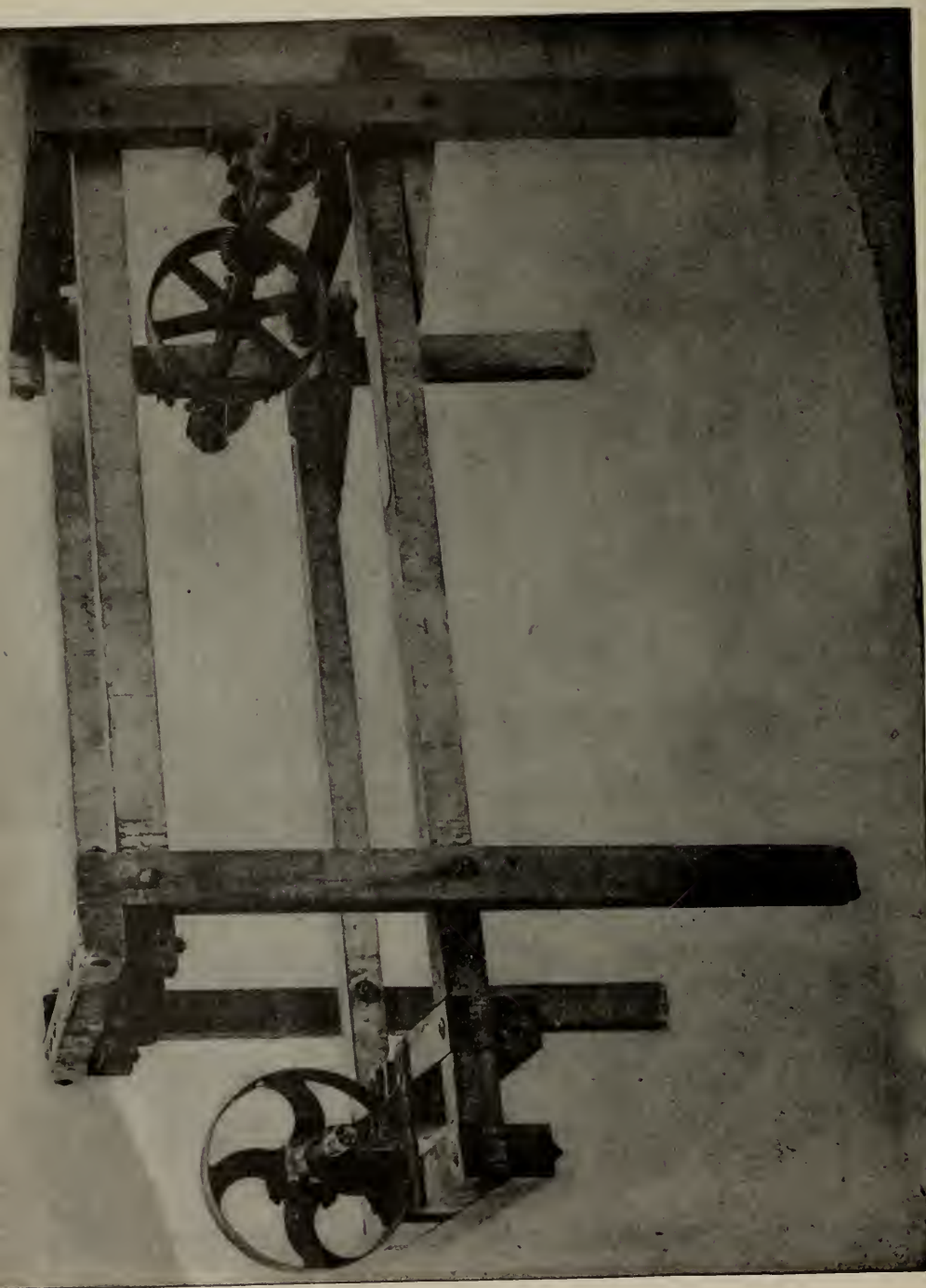
**Exhibit I.**

(Attached to Affidavit of William A. Geiger.)





**Exhibit II.**

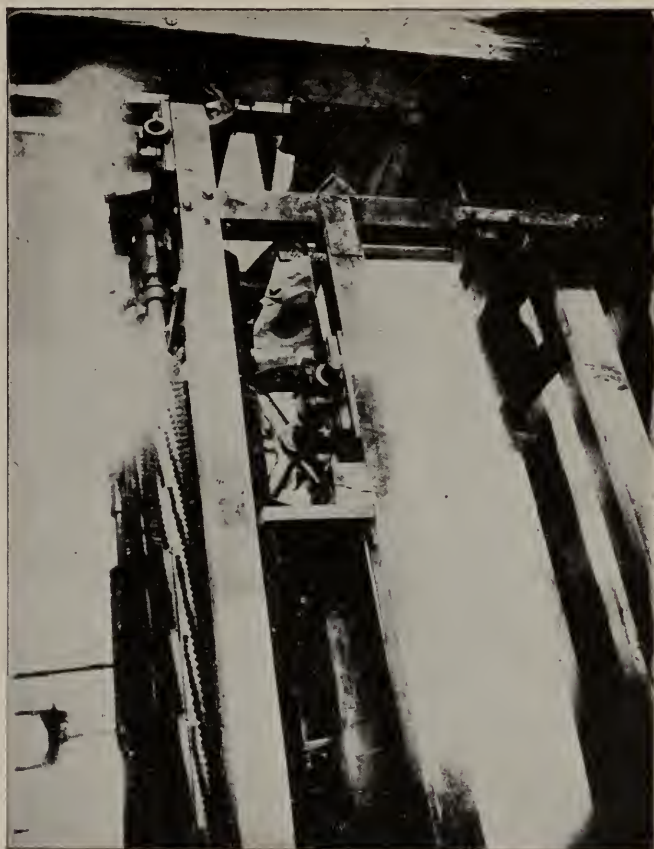


**Exhibit III.**

*vs. Dunkley Company.*

1123

“Dunkley’s Exhibit No. 2, Photograph 1 of Second Machine.”

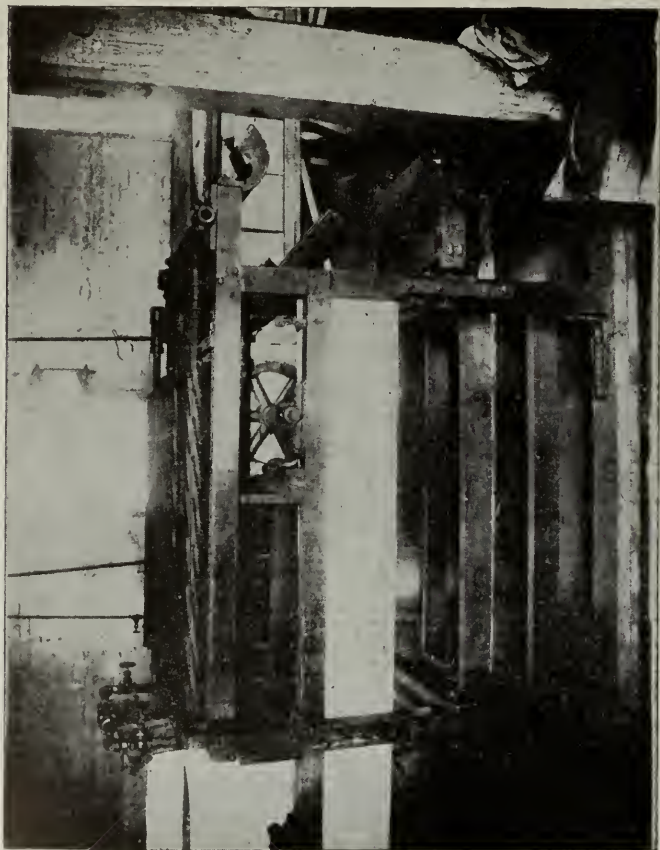




**Exhibit IV.**

1124 *Central California Canneries Company et al.*

“Dunkley’s Exhibit No. 2, Photograph 2 of Second Machine.”



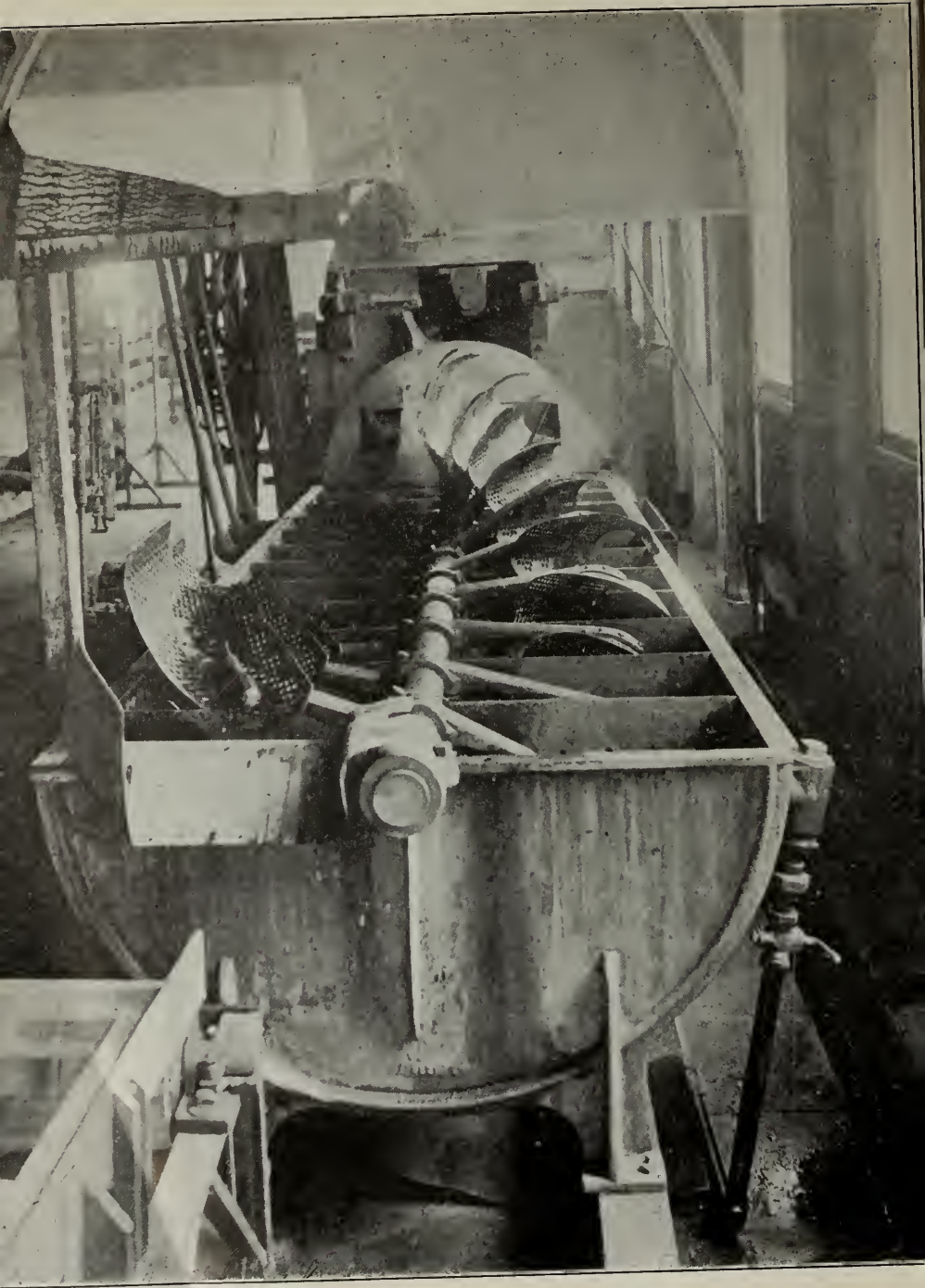
“Dunkley’s Exhibit No. 2, Photograph 3 of Second Machine.”



**Plaintiff's Exhibit No. 5.**

(Attached to Affidavit of G. E. Grier.)

Pasadena Washer, Ptf's Exhibit 5, Dunkley vs.  
Pasadena Canning Co.





**Defendant's Exhibit No. 16.**

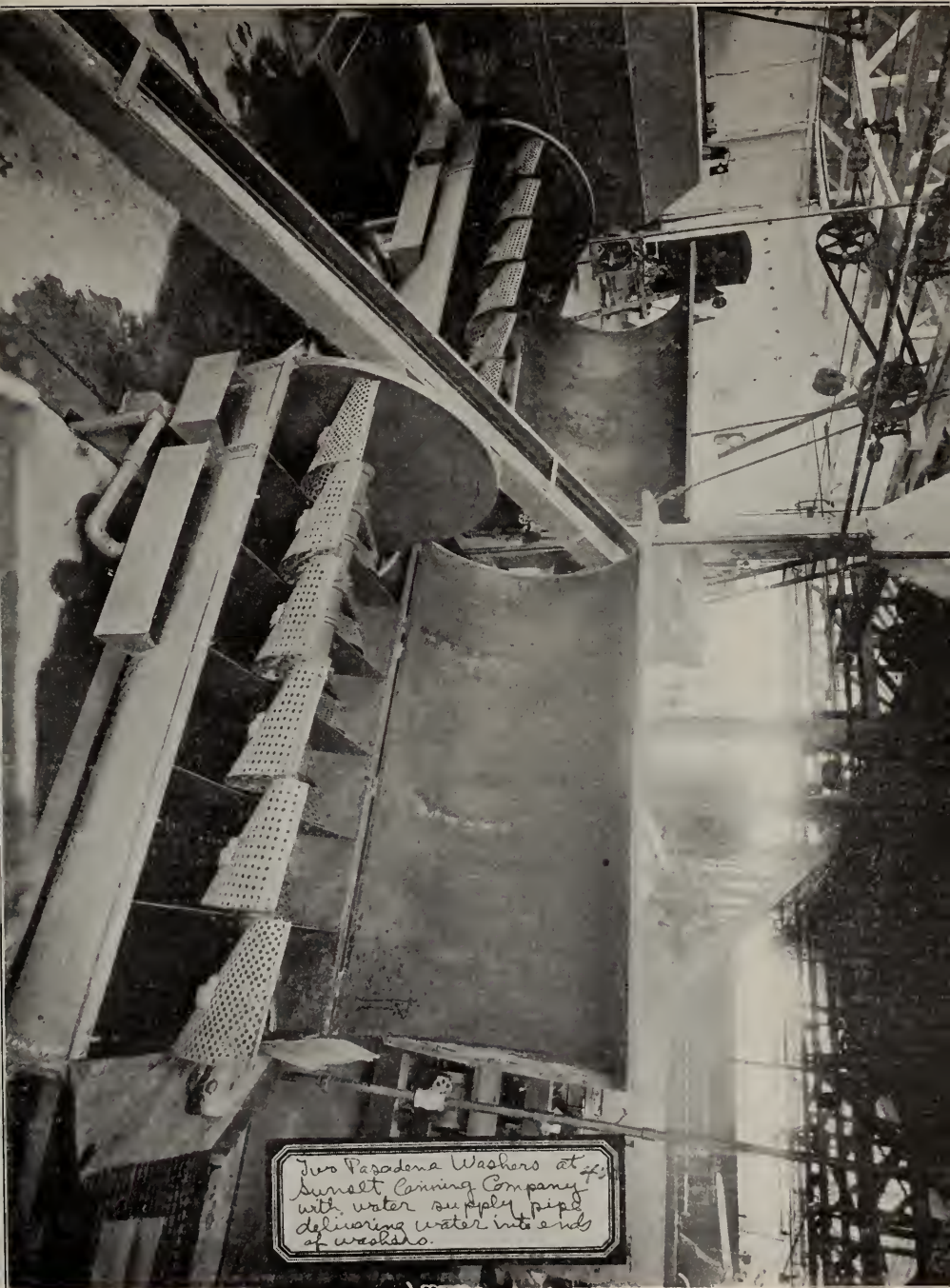


[On reverse side:] Pomona. #3 Pomona Valley Canning Company showing Pasadena Washers and Water supply pipe lines showing one supplied with water from the bottom of washer.—W. F. H.

(Defendant's Ex. No. 16.)

Mr. Boyd Hocker, Supt.

**Defendant's Exhibit No. 15.**

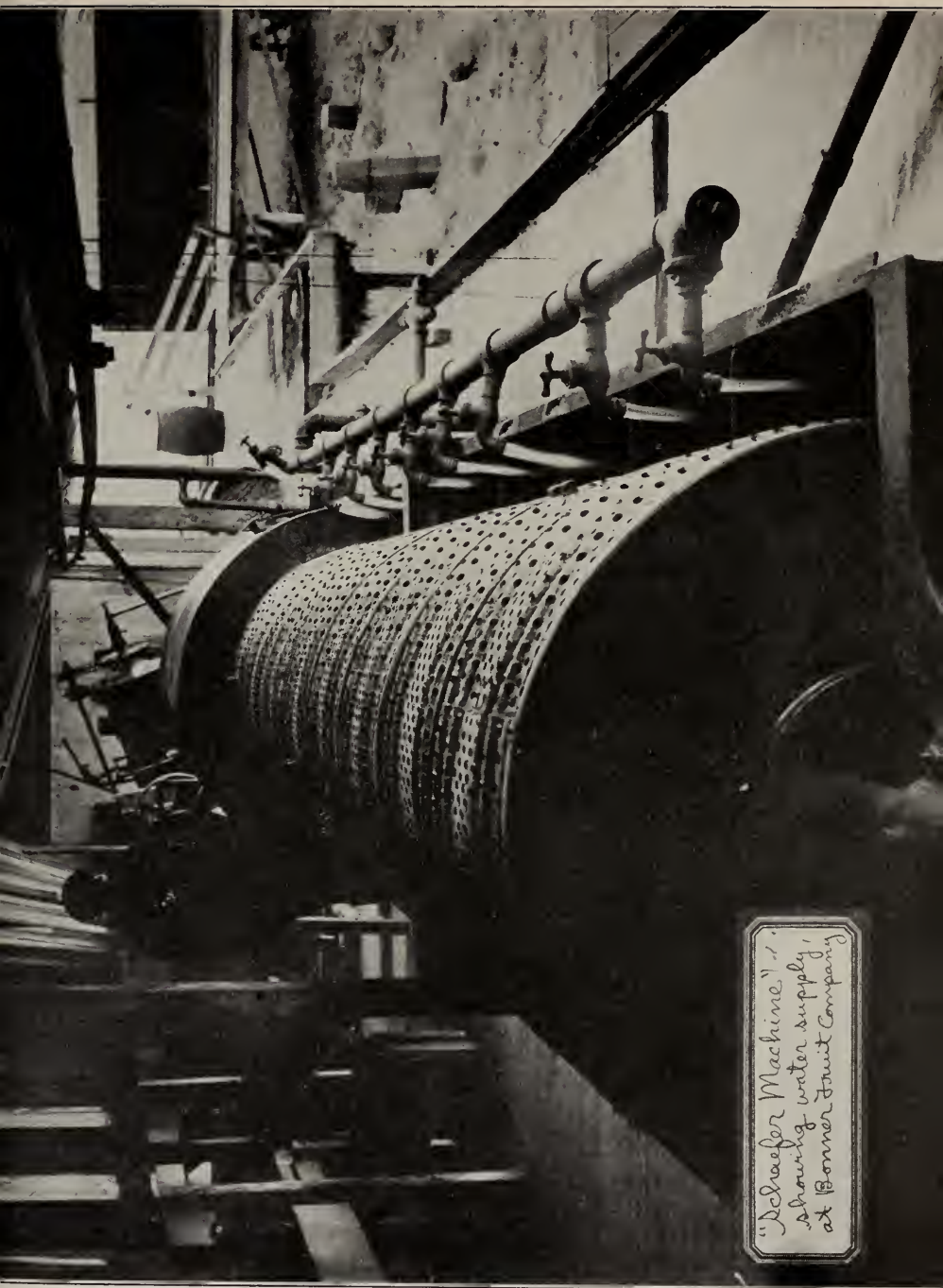




[On reverse side:] Pomona. #2 Sunset Canning Company showing two Pasadena Washers water supply pipes delivering water into ends of Washers.—W. F. H.

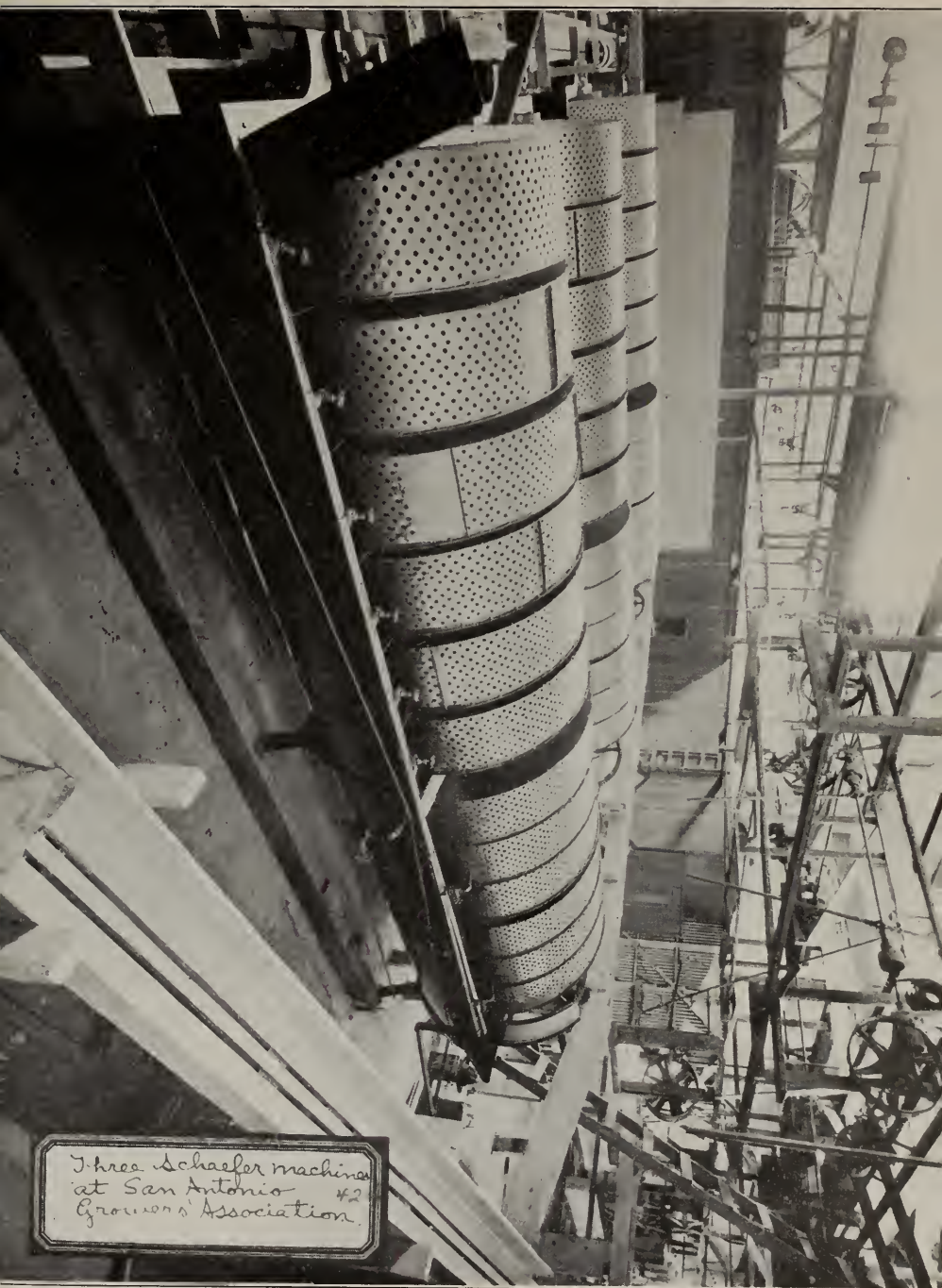
R. E. Page, Supt. saw exposures made.

(Defendant's Ex. No. 15.)



"DeGrafer Machine." .  
showing water supply,  
at Bonner Fruit Company

[On reverse side:] LANKERSHIM. #13  
Bonner Fruit Co.—Shows water running into  
Scheafer washers separate compartments.—  
W. F. H.



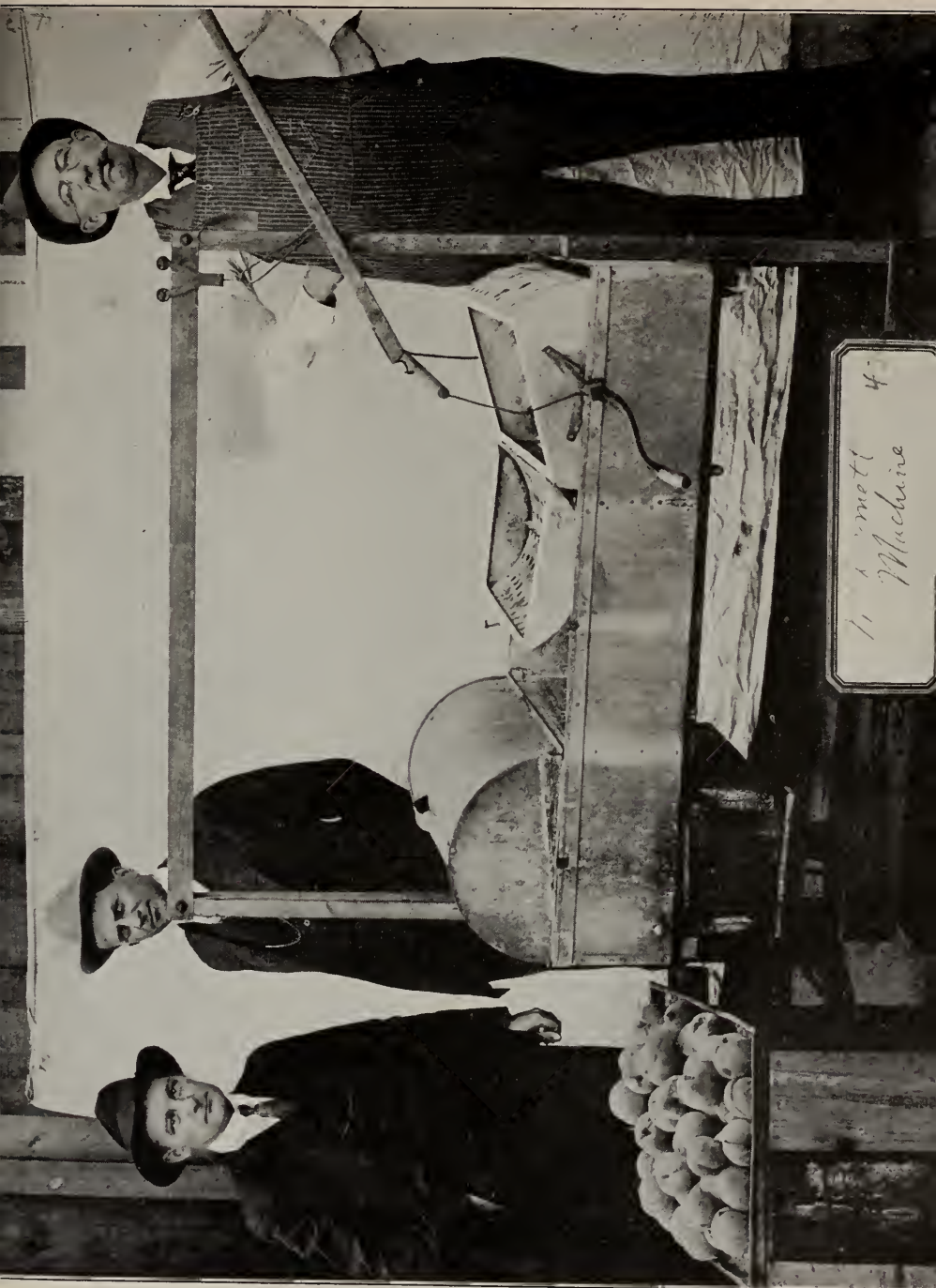
Three Schaefer machines  
at San Antonio #2  
Growers' Association.

[On reverse side:] Ontario. #7 San Antonio Growers Assn.—Showing three Scheafer washers with water supply line to one washer.—W. F. H.

Mr. Holmes, Supt. saw exposures made.



Exhibit "A."



[On reverse side:] #1 EXHIBIT #43.  
TEXAS MACHINE (McDERMETT MA-

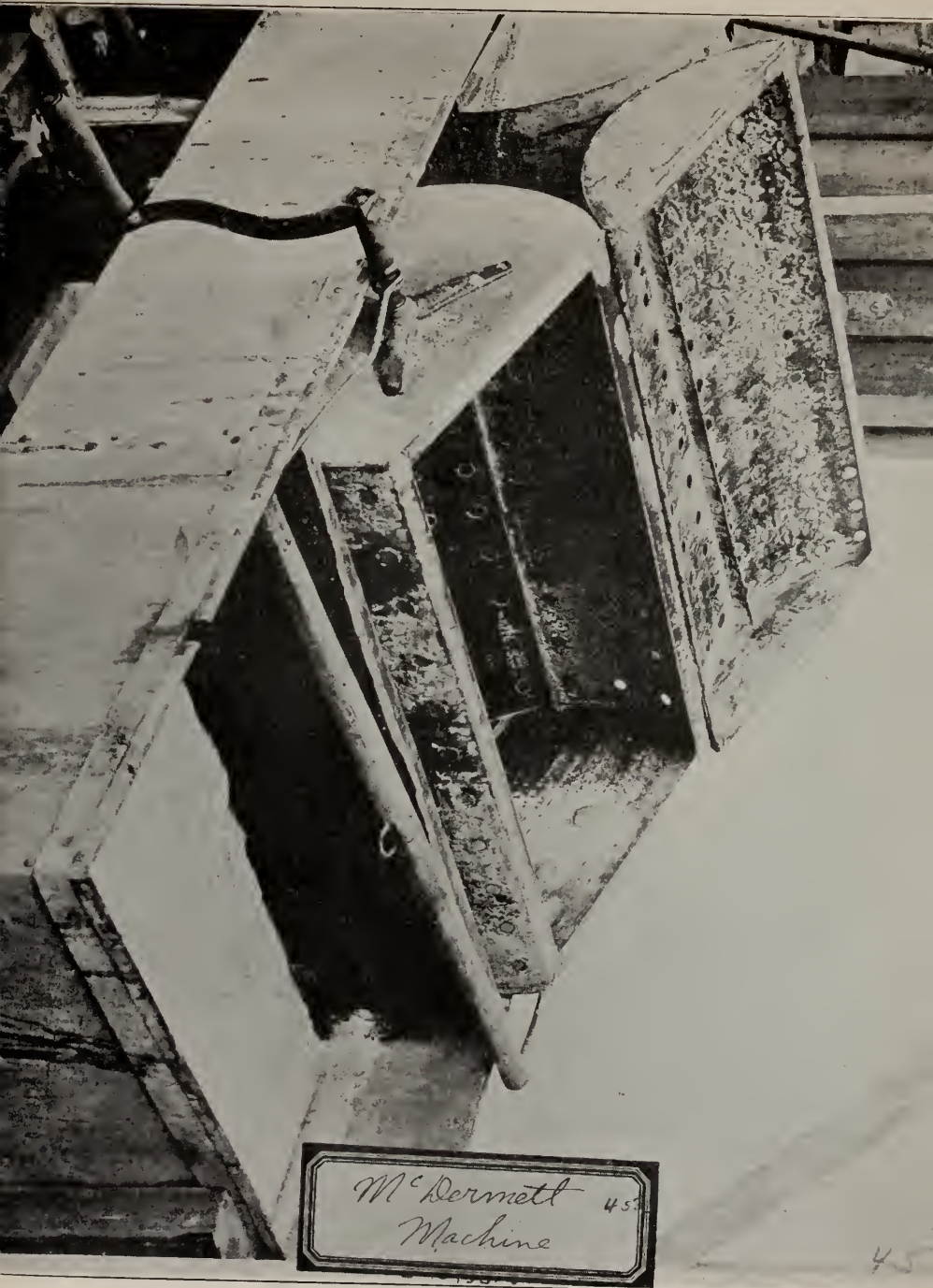




[On reverse side:]  
TEXAS MACHINE

#2 EXHIBIT  
(McDERMETT

#43.  
MA-



[On reverse side:] #3 EXHIBIT #43.  
TEXAS MACHINE (Mc DERMOTT)



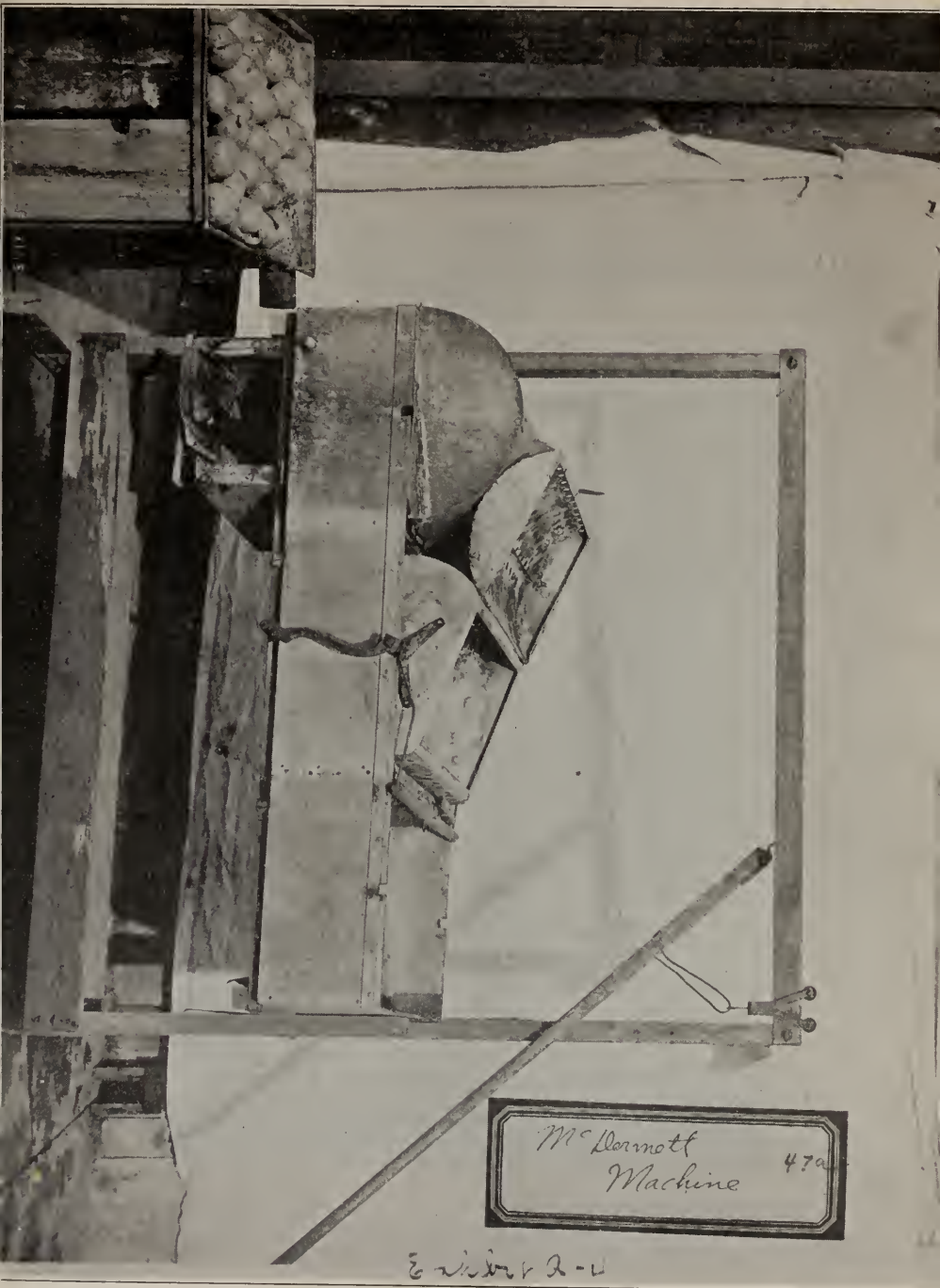
[On reverse side:]  
TEXAS MACHINE

#4 EXHIBIT  
(McDERMETT

#43.  
MA-



Exhibit "A-4."



[On reverse side:] #5 EXHIBIT #43.  
TEXAS MACHINE (McDERMETT MA-  
CHINE)

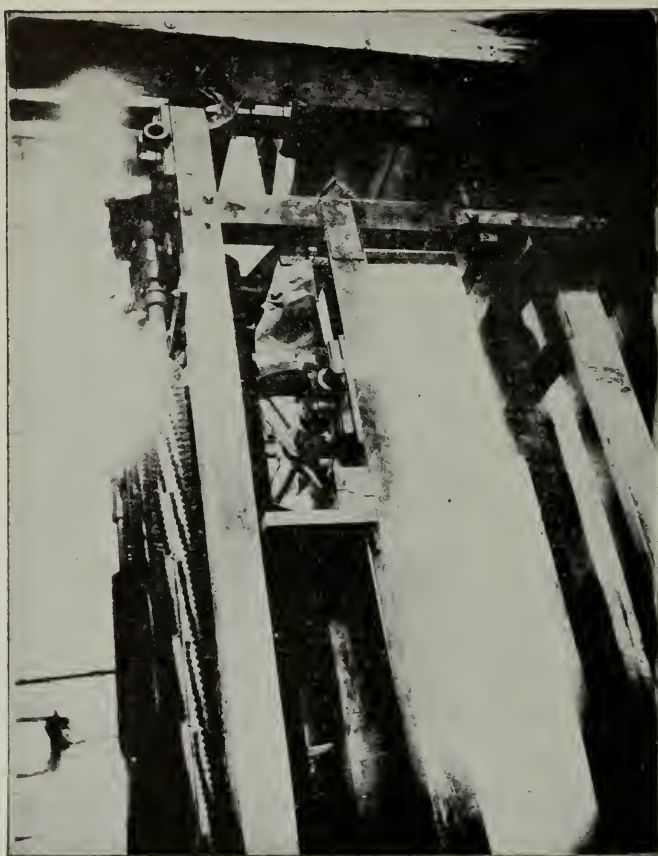
**Exhibit "A."**

(Attached to Affidavit of George Harold.)

128

476

"Dunkley's Exhibit No. 2, Photograph 1 of Second Machine."



**Exhibit "B."**

129

477

"Dunkley's Exhibit No. 2, Photograph 2 of Second  
Machine."



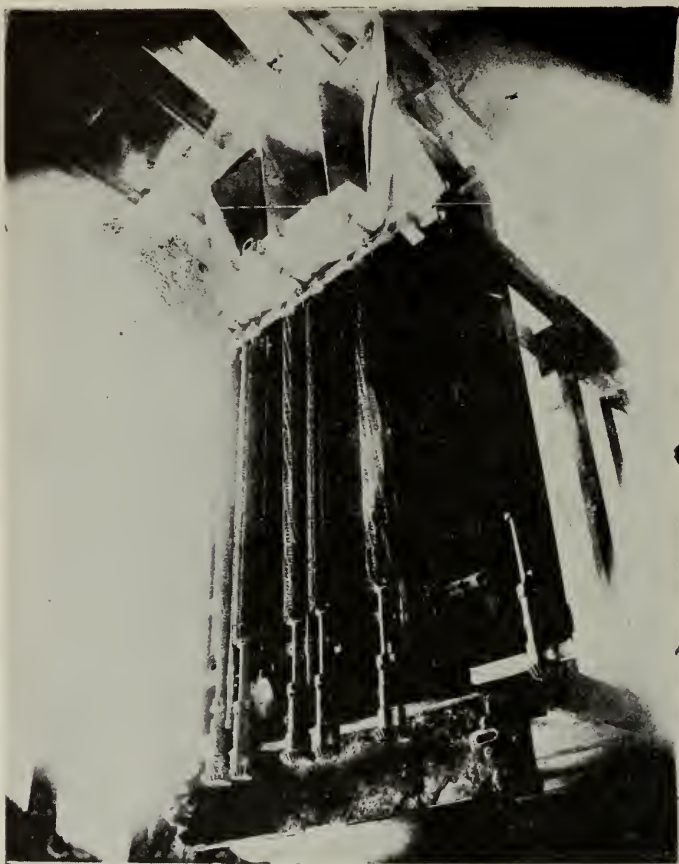


**Exhibit "C."**

130

478

"Dunkley's Exhibit No. 2, Photograph 3 of Second Machine."



### Plaintiff's Exhibit "A."

(Attached to Affidavit of John Hetherington.)

10. 8975

Dumfries Hotel

Pres. Cong. C. 1841

U8 d.

THE END

SECRET CODE 774 1145

A

FOR THE UNITED STATES

May 27

had. All the same.

THE CHRYSLER CREDIT COMPANY,  
INCORPORATED, ORIGIN & ASSURE  
FINANCIAL & CREDIT RISKING  
IN THE UNITED STATES AND  
FOREIGN, FORMERLY CHRYSLER CREDIT  
CORPORATION, 120 N. W. 4th St., Miami, Fla.  
THE CHRYSLER CREDIT COMPANY, SUEZ CANAL  
ZONAL, & CORPORATION,

1702156,

50.

JOHNSON COMPANY, a Corporation,

Appallee.

FROM MEMBERS FROM THE SOUTHERN DIVISION  
OF THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF CALIFORNIA,  
SECOND DIVISION.

VOLUME II (pages 449 to 1144, incl)

IDENTIFIED COPY OF WRITTEN TRANSCRIPT  
OF RECORD. NO PROCEEDINGS HELD IN THIS  
CASES CIVIL COURT OF APPEALS, FL.

**Exhibit "A."**

*vs. Dunkley Company.*

1123

"Dunkley's Exhibit No. 2, Photograph 1 of Second Machine."



**Exhibit "B."**

129

477

"Dunkley's Exhibit No. 2, Photograph of Second Machine."





**Exhibit "C."**

130

478

"Dunkley's Exhibit No. 2, Photograph 3 of Second Machine."

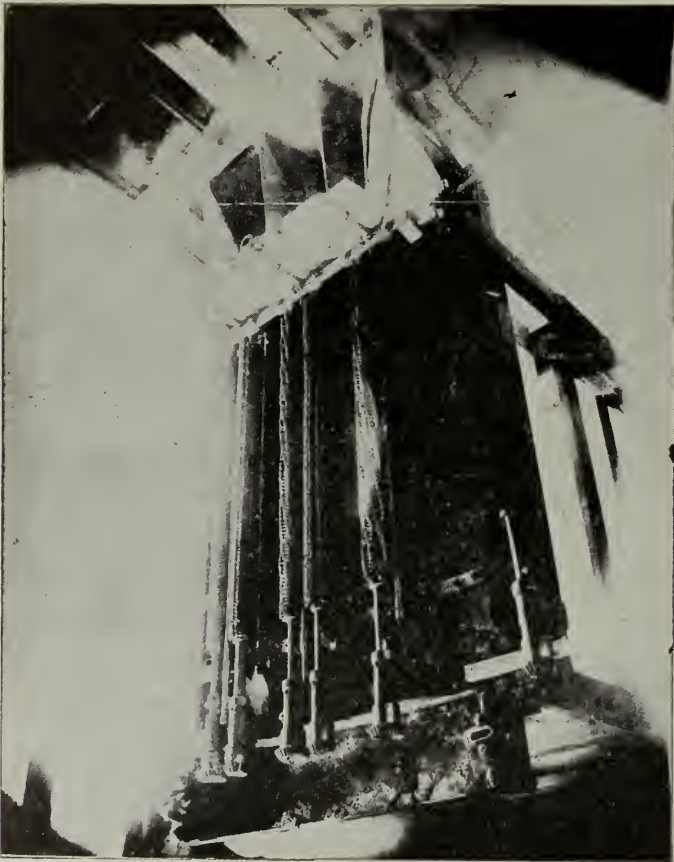
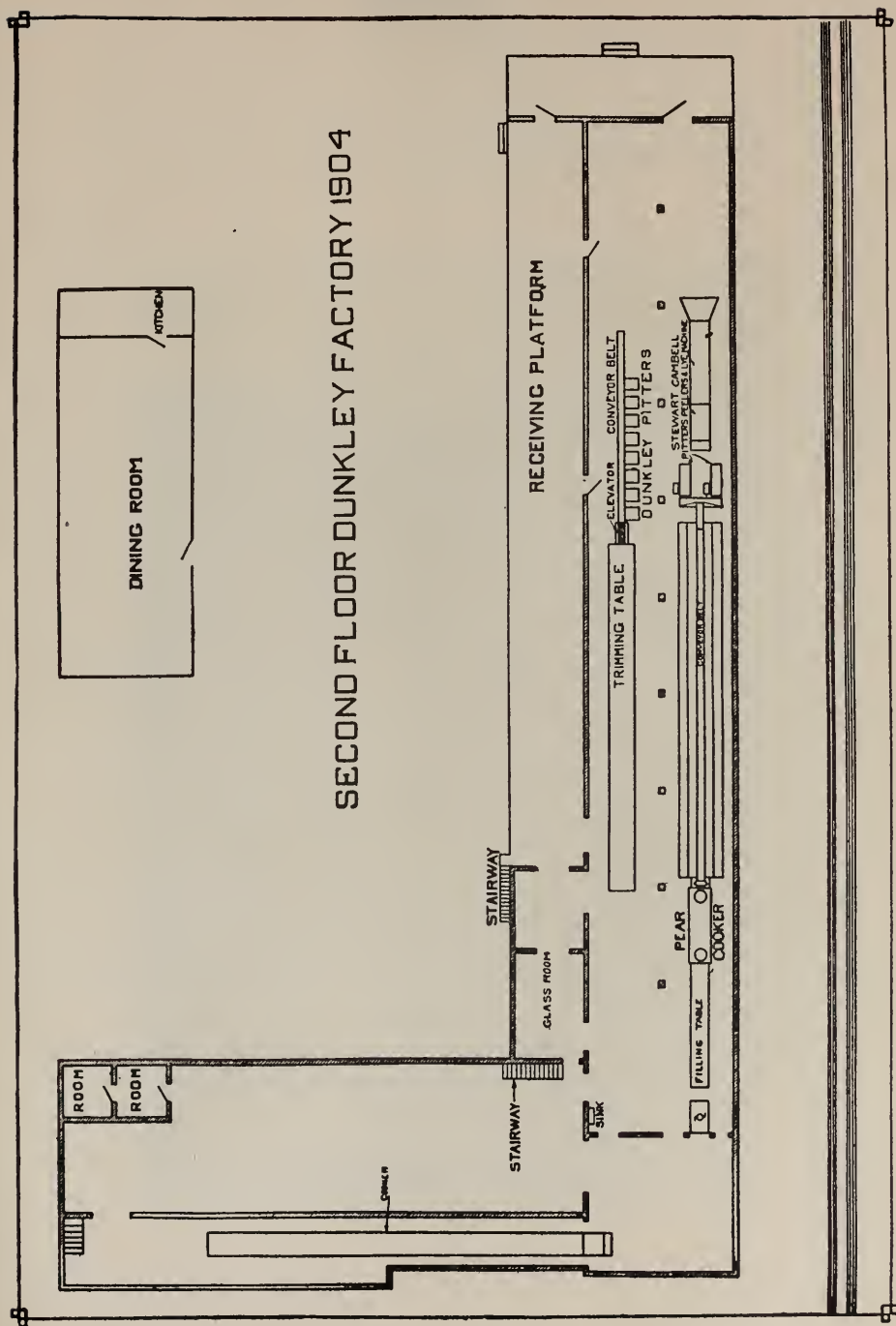


Exhibit "D."





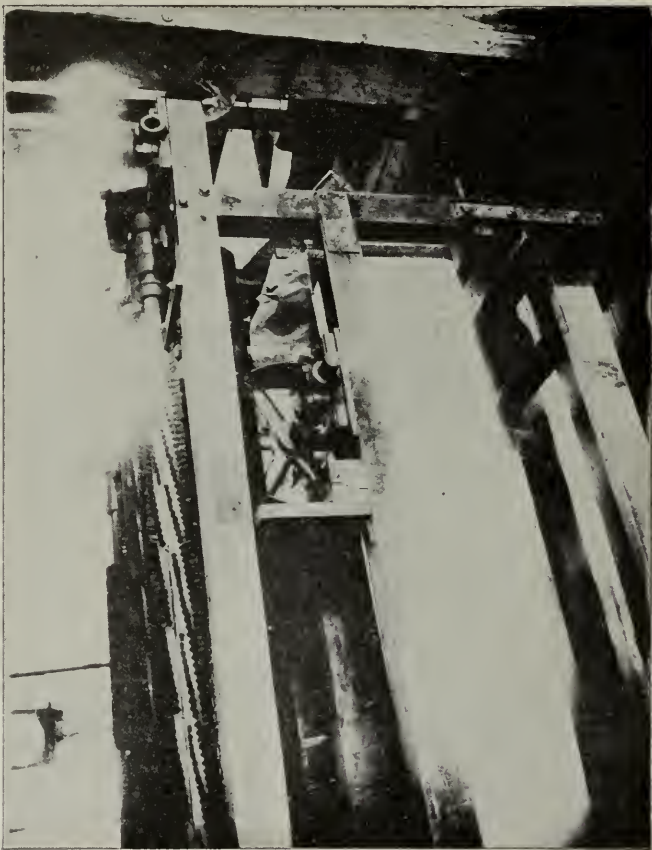
**Exhibit "A."**

(Attached to Supplemental Affidavit of John Hetherington.)

128

476

"Dunkley's Exhibit No. 2, Photograph 1 of Second Machine."



**Exhibit "B."**

129

477

"Dunkley's Exhibit No. 2, Photograph 2 of Second Machine."

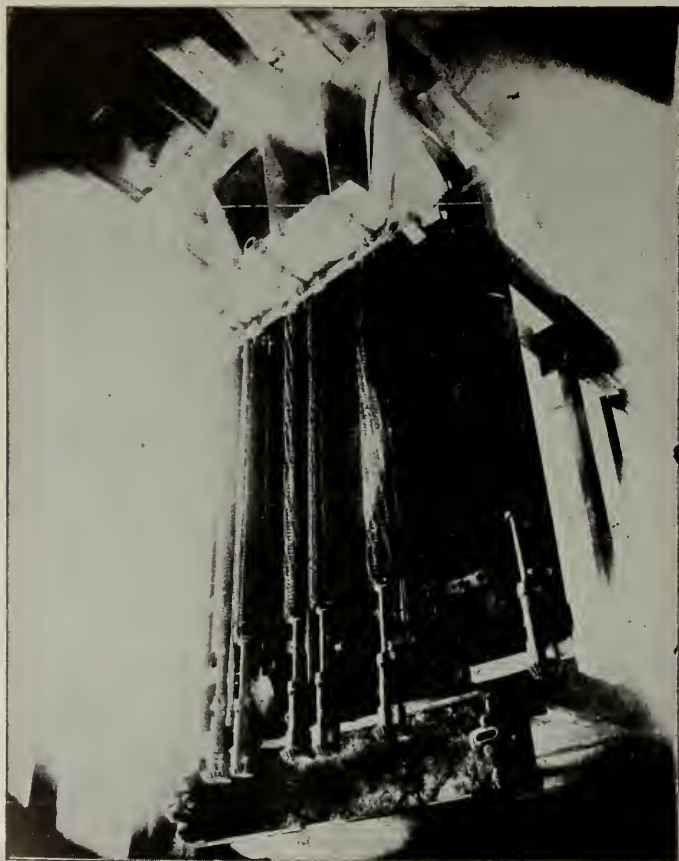


**Exhibit "C."**

130

478

"Dunkley's Exhibit No. 2, Photograph 3 of Second Machine."



**Exhibit "A."**

(Attached to Affidavit of Mary Z. Hinderliter.)





Exhibit "B."



*Filling Table*





Exhibit "B."

1912

Philpe & Ogden

Oct 12

1914

Oct 31 To Mch

1915

1915 Dec 7 1914

Oct

1914

Twinkley Co.

Harbor, Mich.

Oct 4 Out for mfg

1915

99607

Dec

1

Dec

24

1914

Dec 31 To Mch

1915

99607

Dec

1

Dec

24

1914

Jan 31

99607

Dec

1

Dec

24

1914

Mar 31

99607

Dec

1

Dec

24

1914

April 25

99607

Dec

1

Dec

24

1914

May 25

99607

Dec

1

Dec

24

1914

June 27

99607

Dec

1

Dec

24

1914

June 27

99607

Dec

1

Dec

24

1914

July 31

99607

Dec

1

Dec

24

1914

Sept 14

99607

Dec

1

Dec

24

1914

Sept 31

99607

Dec

1

Dec

24

1914

Oct 31

99607

Dec

1

Dec

24

1914

Nov 15

99607

Dec

1

Dec

24

1914

Dec 15

99607

Dec

1

Dec

24

1914

Dec 31

99607

Dec

1

Dec

24

1914

Jan 15

99607

Dec

1

Dec

24

1914

Feb 15

99607

Dec

1

Dec

24

1914

Mar 15

99607

Dec

1

Dec

24

1914

Apr 15

99607

Dec

1

Dec

24

1914

May 15

99607

Dec

1

Dec

24

1914

June 15

99607

Dec

1

Dec

24

1914

July 15

99607

Dec

1

Dec

24

1914

Aug 15

99607

Dec

1

Dec

24

1914

Sept 15

99607

Dec

1

Dec

24

1914

Oct 15

99607

Dec

1

Dec

24

1914

Nov 15

99607

Dec

1

Dec

24

1914

Exhibit "C."

695

331

Aug. 30, 1903.

For Dunkley Co.,

City.

Cash

100 Stroj	3 1/24	\$10 50
100 Miller levels	5	65
100 1/2 x 3" stons with nuts	7	2 27
100 rubber packing	100 lb.	1 40
100 supplies complete	10	30
10 hours work	500 hr.	6 00
" " "		3 00
" " "		6 00
" " "		4 00
		<u>\$45 00</u>
		\$45 00

✓

With this, an invoice attached.  
 In other words a copy of the charges made to us for salvaging. It  
 was last charged you with what it cost us. Please return the  
balance to the London Salvaging Co. by return mail.

101

462

Aug. 31, 1903.

Included Cash and Co.

For Cash and Co.

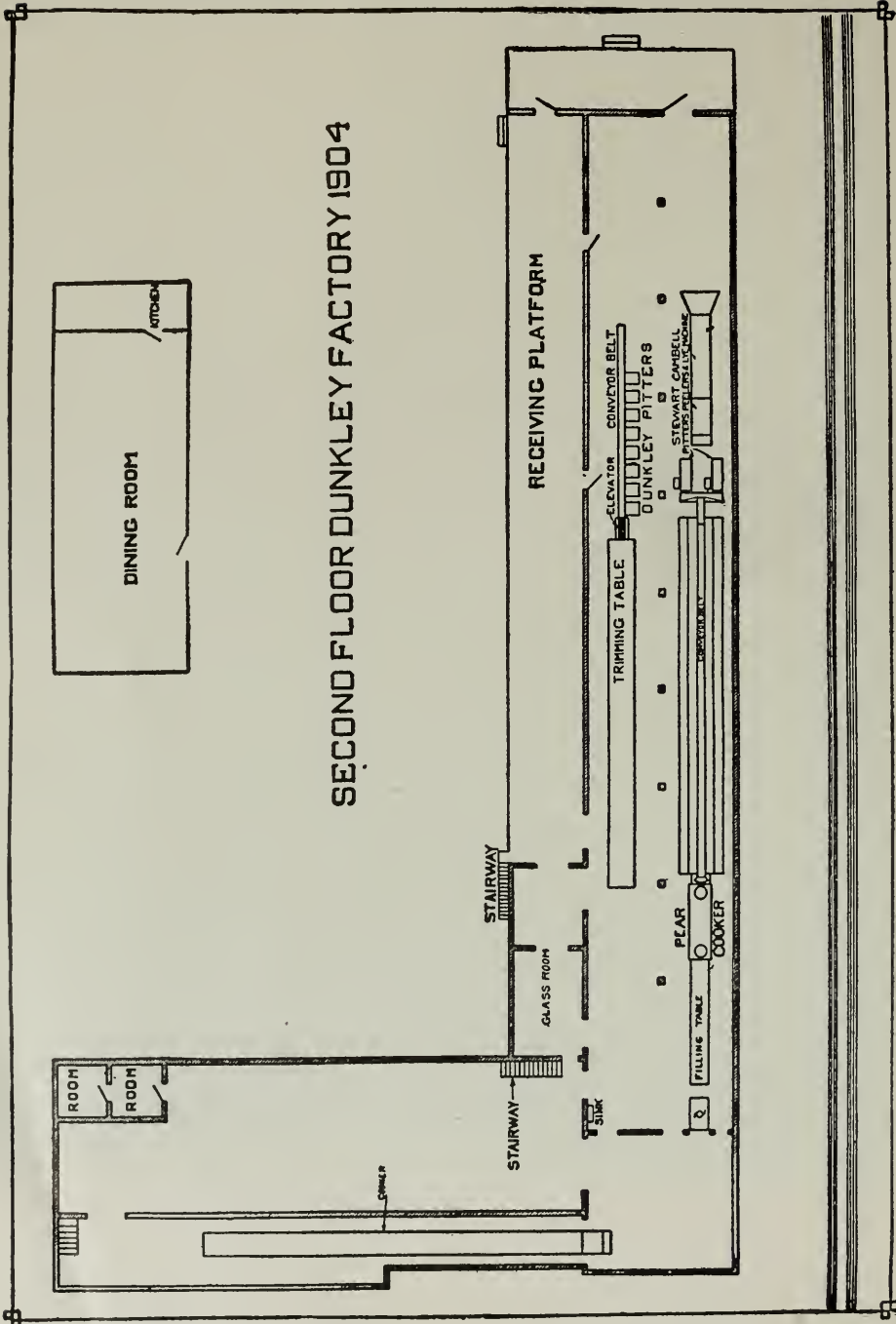
Cash

For Cash and Co.

✓

Exhibit "A."

(Attached to Affidavit of Bert McFarland.)

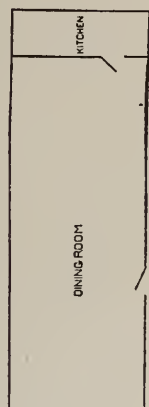


**Exhibit "A."**

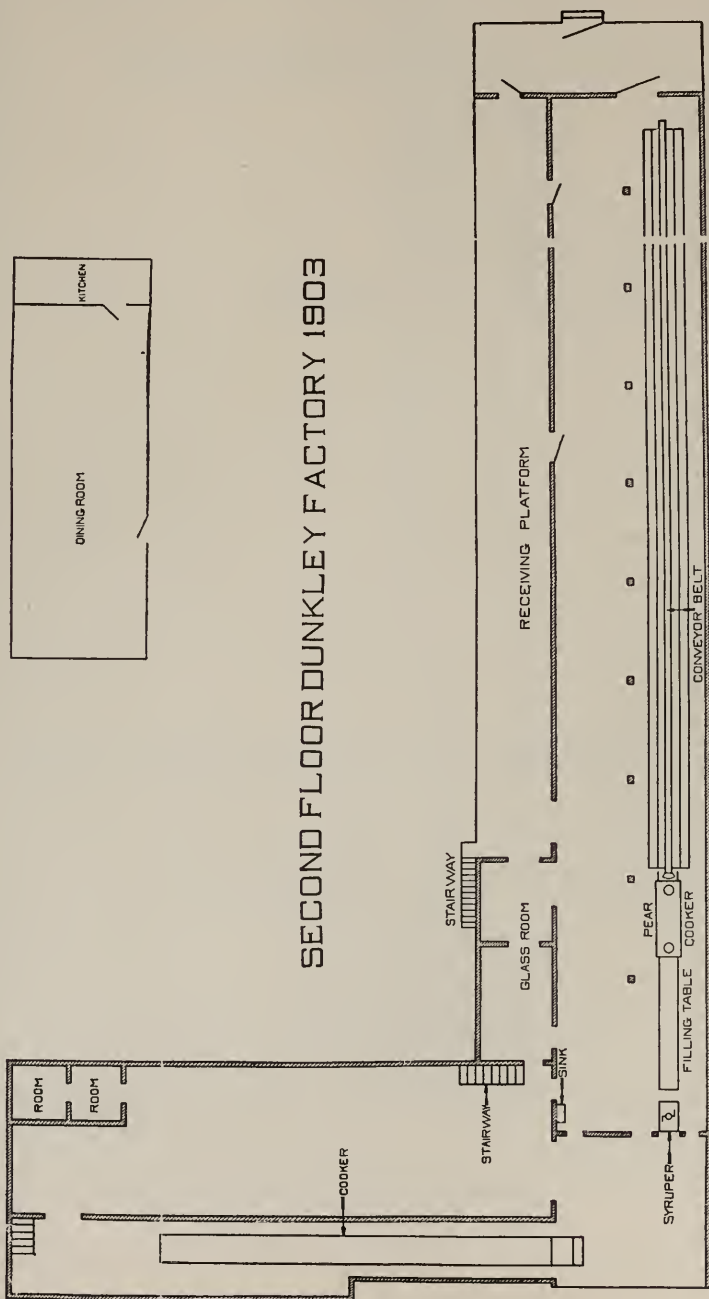
(Attached to Affidavit of Arthur W. Norton.)

EAST

NORTH

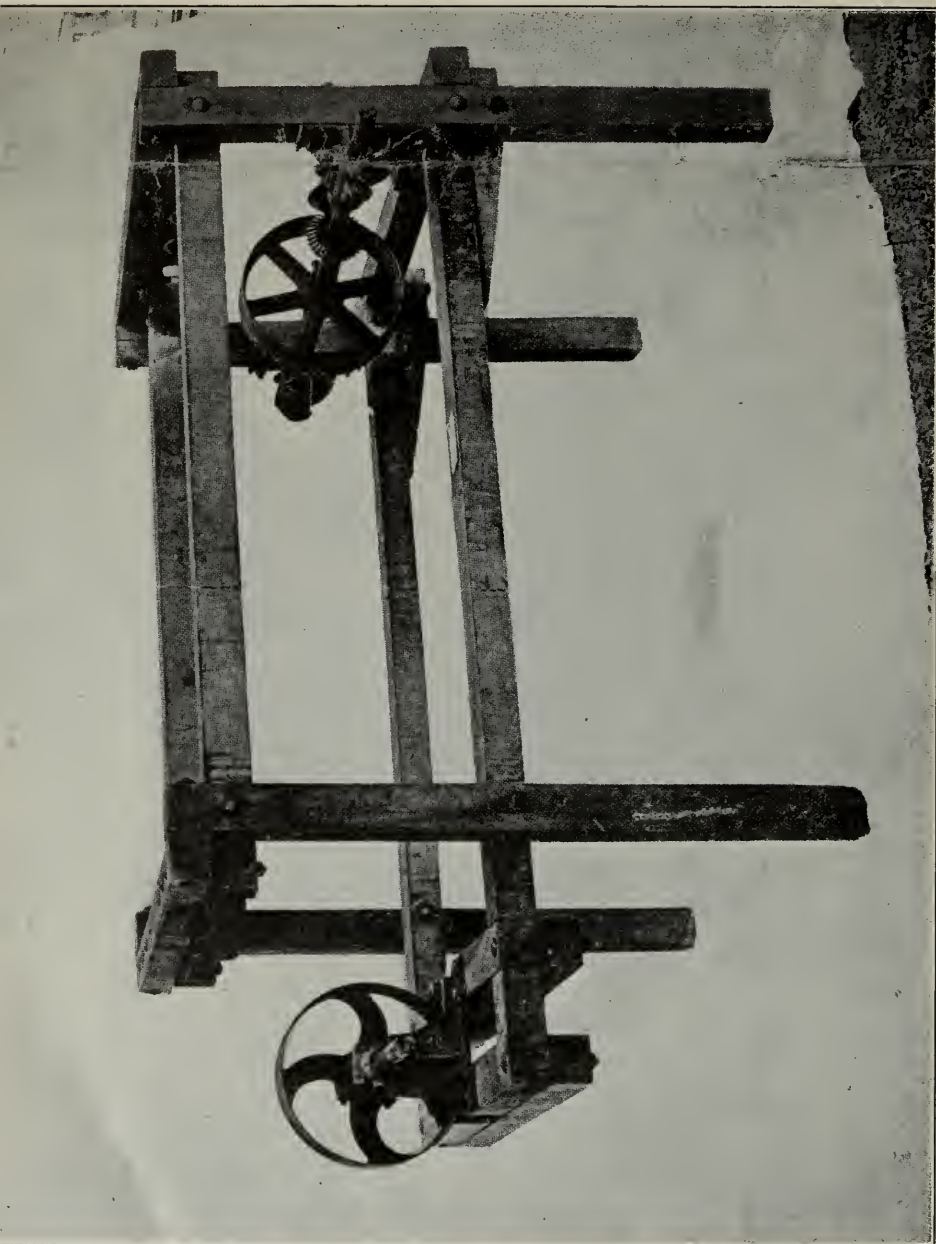


**SECOND FLOOR DUNKLEY FACTORY 1903**





**Exhibit "B."**

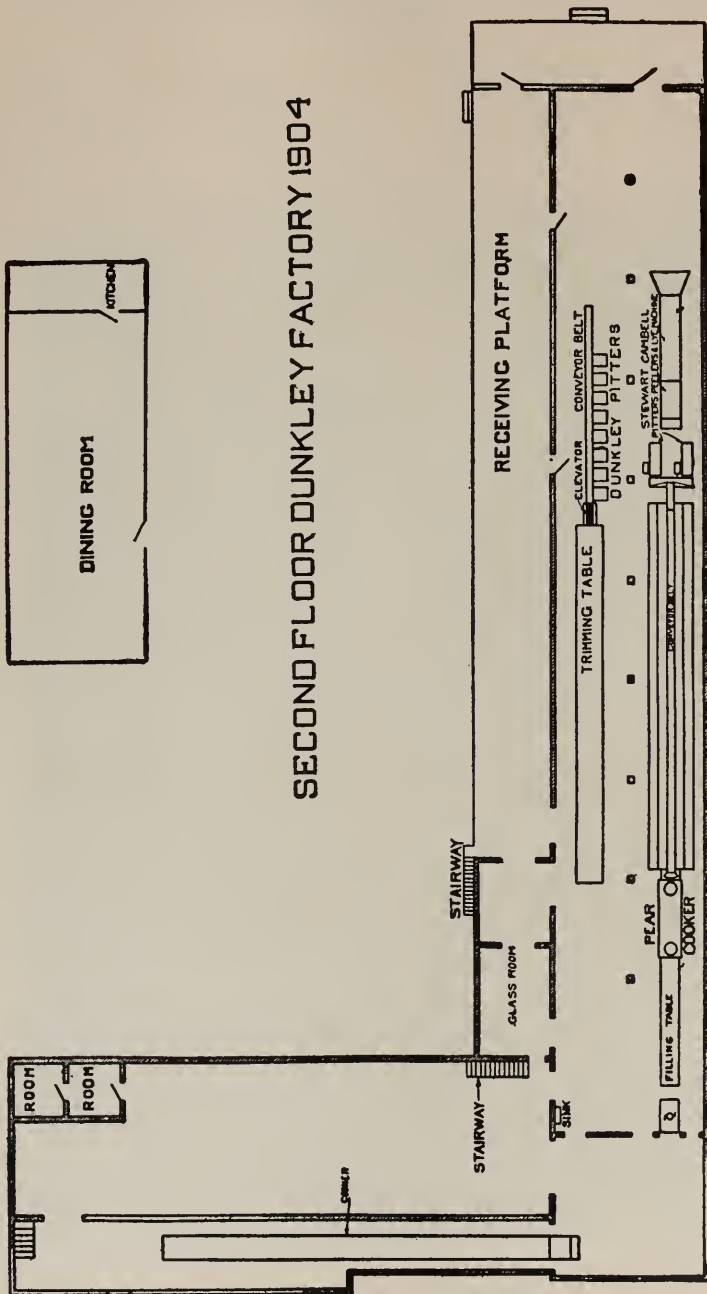


Photograph of Dunkley's First Machine (3N L. A., Ex. No. 11; 5NS. F., Ex. No. 10; 4N Int., Ex. No. 1).  
Conceived and Disclosed August, 1903. Constructed September-October, 1903.

Exhibit "C."

EAST

NORTH



SECOND FLOOR DUNKLEY FACTORY 1904

RECEIVING PLATFORM

TRIMMING TABLE

CONVEYOR BELT

DUNKLEY PITTERS

STEWART STEAM FLOUR MACHINE

CONSELL

PEAR

COOKER

STAIRWAY

GLASS ROOM

STAIRWAY

ROOM

ROOM

DINING ROOM

ATTACHMENT

WEST

SOUTH

(L. A. Exhibit 6—For Identification)



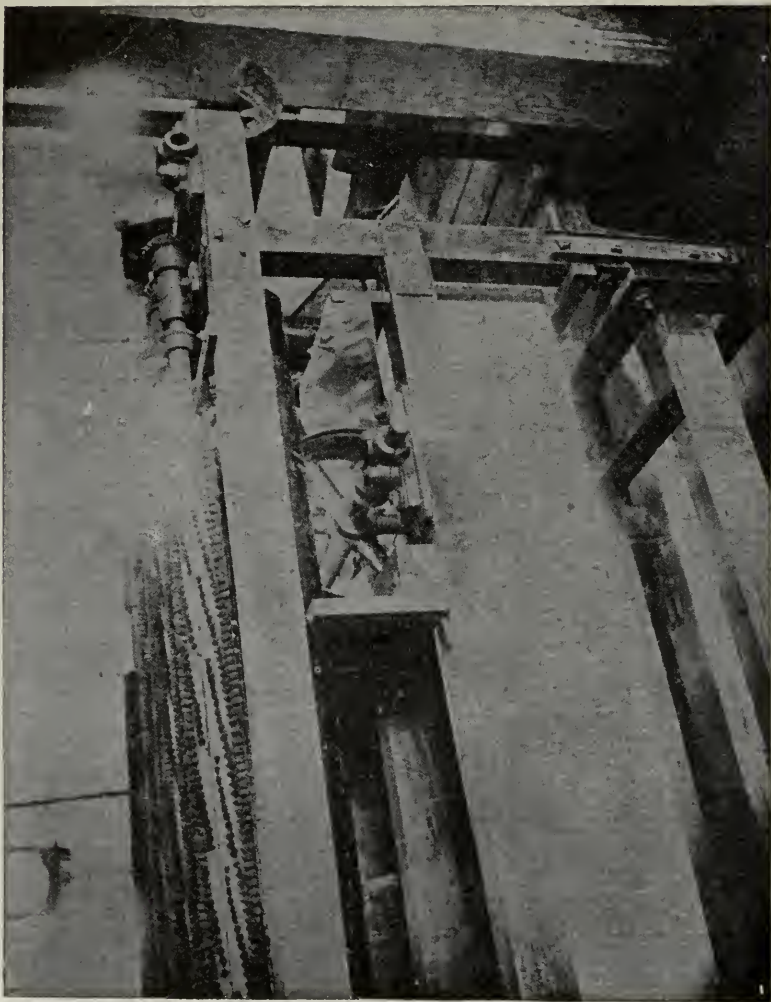
**Exhibit "A."**

(Attached to Supplemental Affidavit of Arthur W.  
Norton.)

128

476

"Dunkley's Exhibit No. 2, Photograph 1 of Second  
Machine."

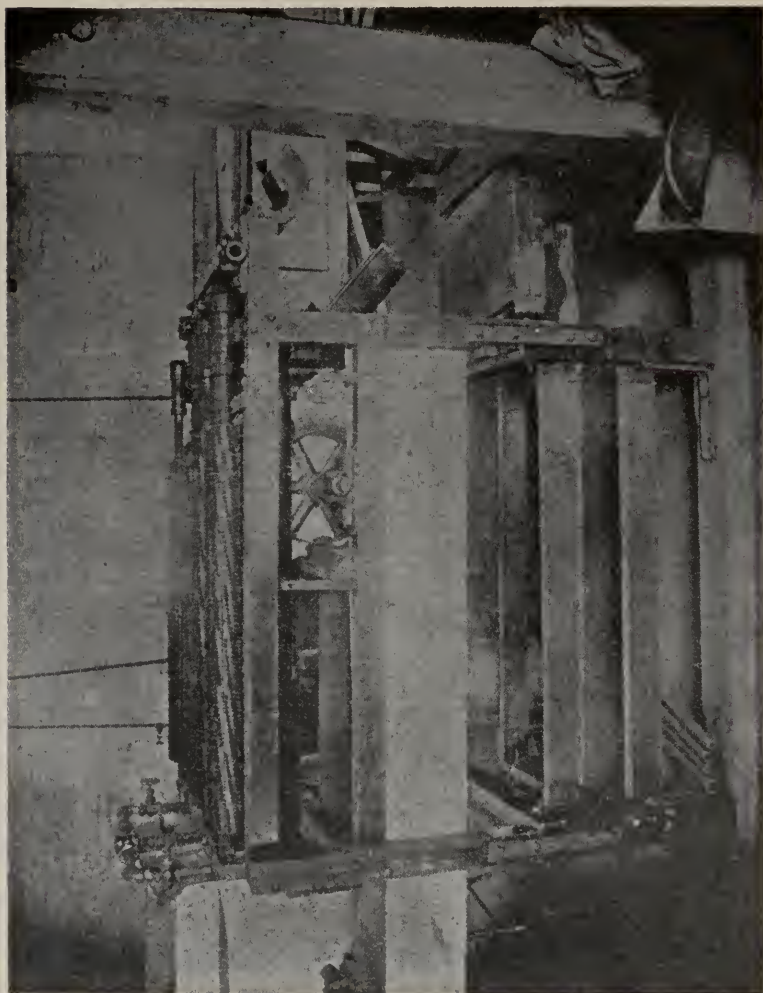


**Exhibit "B."**

129

477

"Dunkley's Exhibit No. 2, Photograph 2 of Second Machine."



**Exhibit "C."**

130

478

"Dunkley's Exhibit No. 2, Photograph 3 of Second Machine."

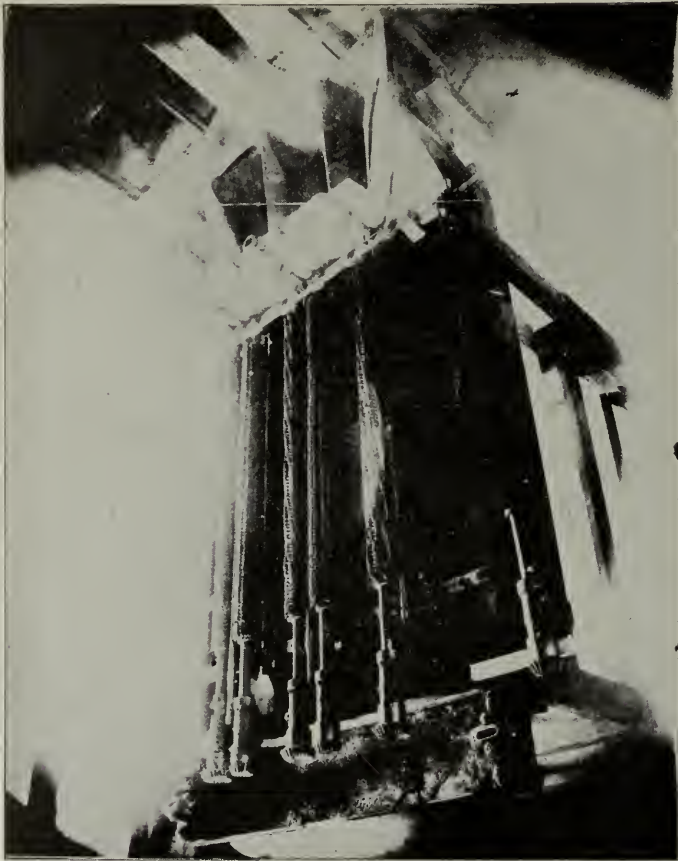


Exhibit "A."

(Attached to Affidavit of Nicholas Plating.)

695

644

331

Aug. 20, 1903.

Cash      For Dunkley Co.,      City.

1000 steel	5 1/2%	\$19 50	
1000 zinc levels	5	85	
100 1/2 x 3" studs with nuts	7	2 47	
100 rubber packing	100 lb.	1 48	
4 handles complete	15	35	
10 hours work	500 hr.	6 00	✓
		3 60	
		6 80	
		4 00	\$43 80
			101 04

1000 steel, per invoice attached

We extend hereto a copy of the charge made to us for galvanizing, by  
 which we have charged you only what it cost us. Please return the  
 balance from the Oregon Galvanizing Works, by return mail.

101

462

Cash      For Dunkley Co.,      City.

1000 steel, per invoice attached

We extend hereto a copy of the charge made to us for galvanizing, by  
 which we have charged you only what it cost us. Please return the  
 balance from the Oregon Galvanizing Works, by return mail.

1000 steel, per invoice attached

We extend hereto a copy of the charge made to us for galvanizing, by  
 which we have charged you only what it cost us. Please return the  
 balance from the Oregon Galvanizing Works, by return mail.

1000 steel, per invoice attached

We extend hereto a copy of the charge made to us for galvanizing, by  
 which we have charged you only what it cost us. Please return the  
 balance from the Oregon Galvanizing Works, by return mail.



**Exhibit "A."**

(Attached to Supplemental Affidavit of Nicholas  
Plating.)



No. <i>C-8 891</i>
<i>Dunkley</i>
vs.
<i>Pasadena</i>
Dept. <i>EXHIBIT</i>
No. <i>35</i>
Date <i>June 13, 1918</i>
<i>Geo. W. Williams</i> Clerk
<i>Geo. W. Cannon</i> Deputy Clerk

Exhibit "B."

30 X 4 one sheet  $96 \times 50 \times \frac{5}{16} = 33 \text{ sq ft}$

423

2 Heads  $34 \times \frac{3}{8} = 97$  each 194 493  
398  
95

2 "  $34 \times \frac{5}{16} = 81$  each

162

$2 \frac{1}{4} = 5$  to the post  $5 \times 4 = 20$  in handles  
2 in center handle  $6 \times 5 = 30$

2 studs





**Exhibit "A."**

(Attached to Affidavit of Daniel P. Robinson.)

128

476

"Dunkley's Exhibit No. 2, Photograph 1 of Second Machine."



**Exhibit "B."**

129

477

"Dunkley's Exhibit No. 2, Photograph 2 of Second Machine."

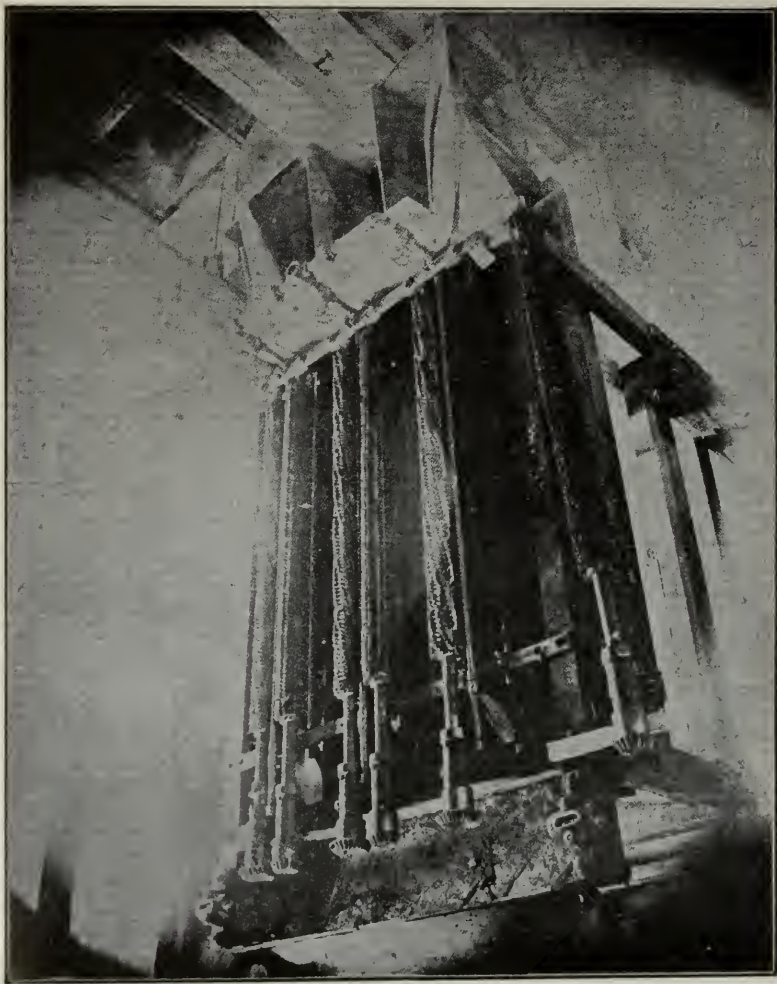


**Exhibit "C."**

130

478

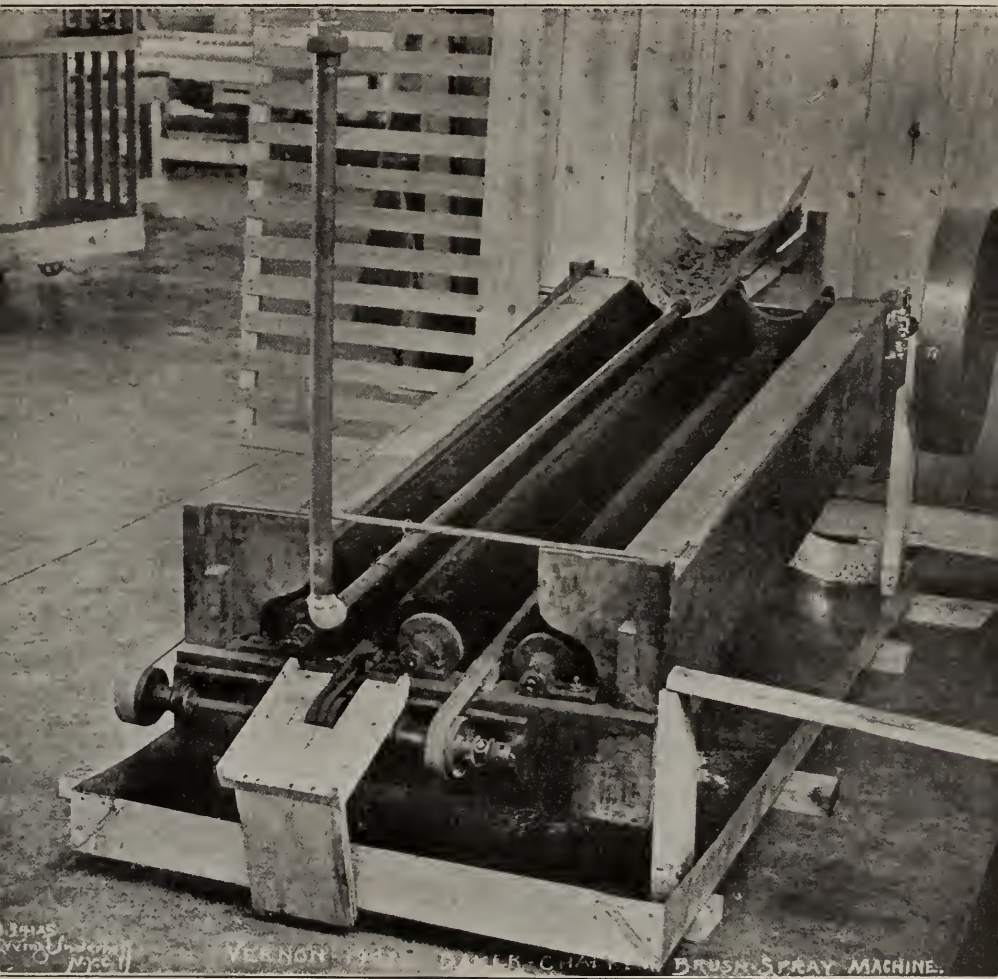
"Dunkley's Exhibit No. 2, Photograph 3 of Second Machine."





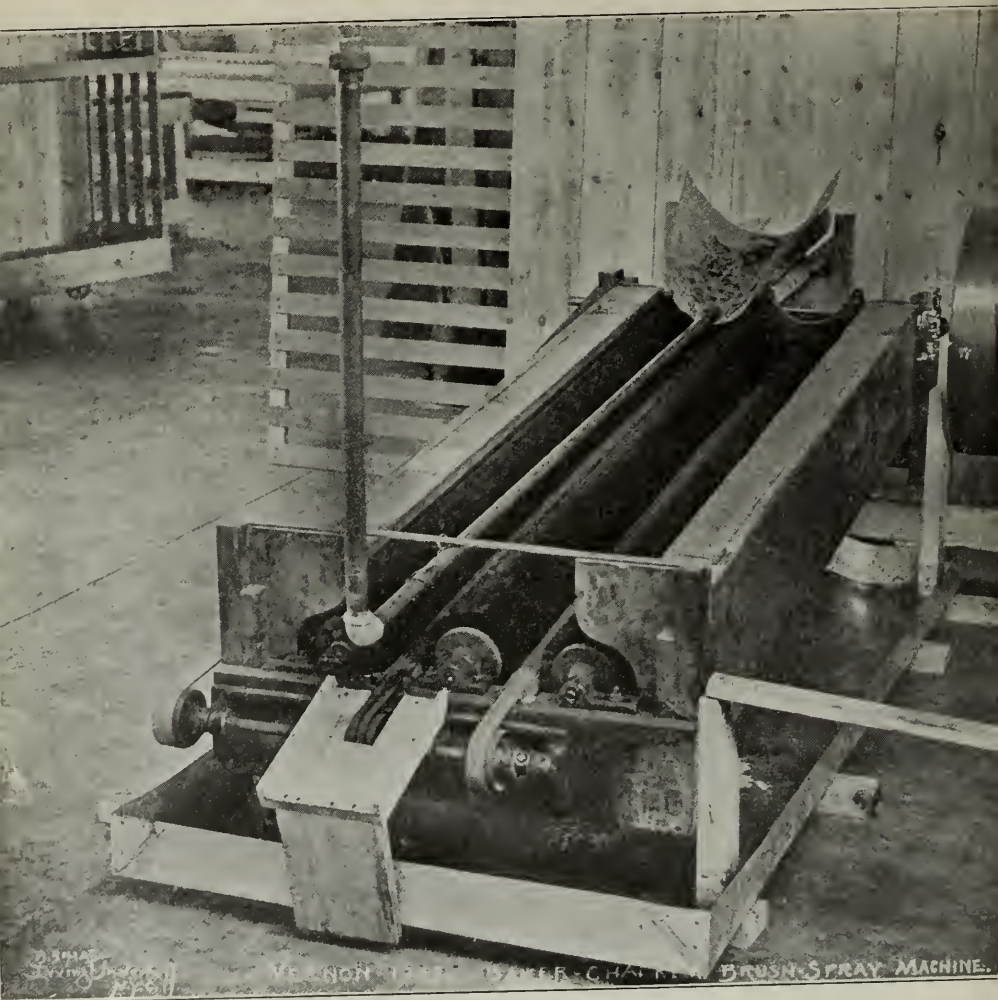
**Exhibit "A."**

(Attached to Affidavit of Fred Stebler.)



**Exhibit "A."**

(Attached to Affidavit of Harrie E. Stewart.)



Plaintiff's Exhibit "A."

(Attached to Affidavit of William Triece.)

A

No. 2015

UNITED STATES

CIRCUIT COURT OF

FOR THE NINTH CIRCUIT

Dunkley Co. et al.

vs. C. C. & G.

May 22

Chas. A. Williams

INTERNATIONAL HARVESTING COMPANY,  
A CORPORATION, GRITIN & COMPANY  
COLLIER, J. O. LEMMON FISHING COM-  
PANY, ANDERSON-TAR-CROFT FISHING COM-  
PANY, COLEMAN FISHING COM-  
PANY, J. M. WILSON & SON, TRANSPORT  
COMPANY, SULLIVAN & SONS,  
SULLIVAN & SONS, SULLIVAN & SONS,  
SULLIVAN & SONS, SULLIVAN & SONS,

Appellants,

vs.

SULLIVAN COMPANY, a Corporation,

Appellee.

FROM APPEALS FROM THE SOUTHERN DIVISION  
OF THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF CALIFORNIA,  
SECOND DIVISION.

VOLUME II (Pages 449 to 1144, incl)

CHERISHED COPY OF ORIGINAL RECORD  
OF RECORD AND PROCEEDINGS IN THE  
STATES CIRCUIT COURT OF APPEALS

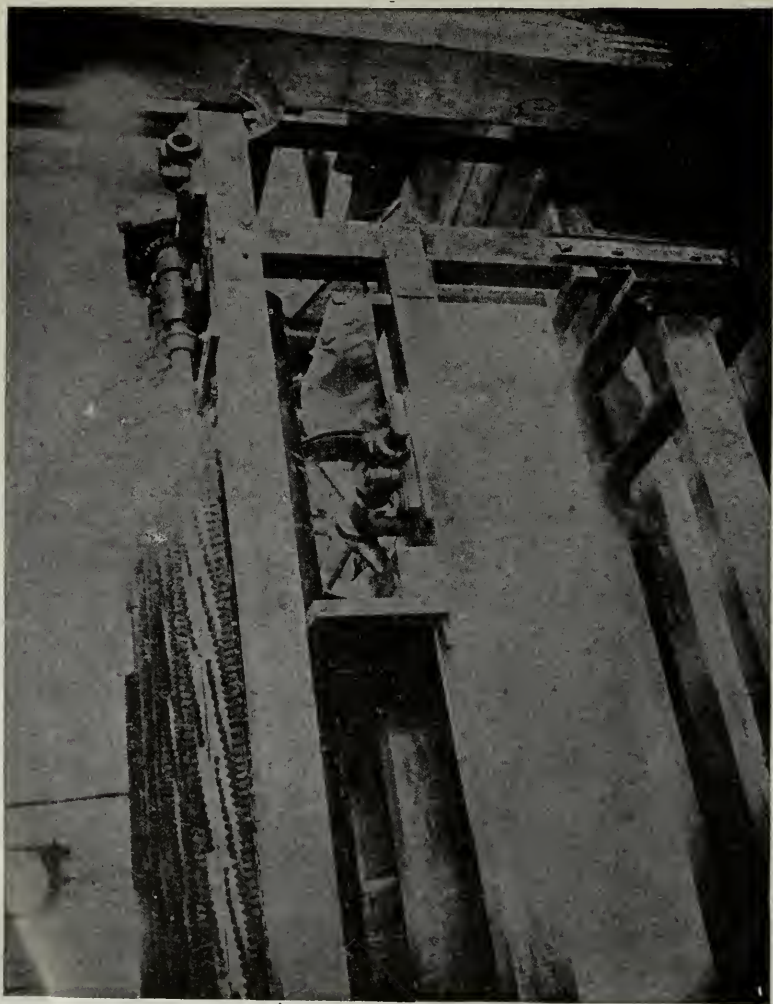


**Exhibit "A."**

*vs. Dunkley Company.*

1123

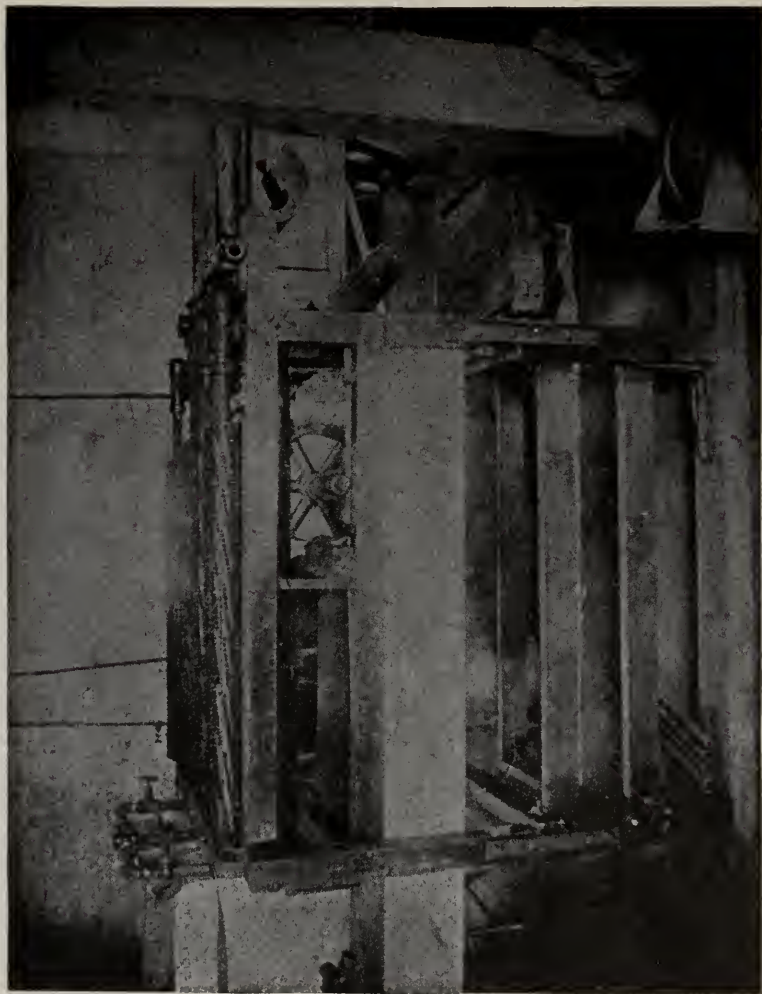
"Dunkley's Exhibit No. 2, Photograph 1 of Second Machine."



**Exhibit "B."**

1124 *Central California Canneries Company et al.*

"Dunkley's Exhibit No. 2, Photograph 2 of Second Machine."



**Exhibit "C."**

*vs. Dunkley Company.*

1125

"Dunkley's Exhibit No. 2, Photograph 3 of Second Machine."

